

No.11912

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE DAVENPORT FOUNDATION,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court
of the United States

FILED

JUN 24 1948

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

MELVIN D. WILSON, ESQ.,
JOSEPH D. PEELER, ESQ.,
J. REX DIBBLE, ESQ.

For Respondent:

E. A. TONJES, ESQ.

Docket No. 10427

THE DAVENPORT FOUNDATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1946

- Apr. 1—Petition received and filed. Taxpayer notified. Fee paid.
- Apr. 1—Copy of petition served on General Counsel.
- May 8—Answer filed by General Counsel.
- May 8—Request for hearing at Los Angeles, California, filed by General Counsel.
- May 10—Notice issued placing proceedings on Los Angeles, California, calendar. Service of answer and request made.
- Dec. 6—Hearing set 2/10/47 at Los Angeles, California.

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- Feb. 14—Appearance of J. Rex Dibble as counsel filed at hearing in Los Angeles.
- Feb. 14—Hearing had before Judge Leech on merits. Motion of petitioner to amend petition—granted, stipulation of facts and ap-

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pearance of J. Rex Dibble filed at hearing. Petitioner's brief 4/28/47. Respondent's brief 6/2/47. Petitioner's reply brief 7/2/47.

Mar. 1—Hearing had before Judge Leech. Stipulation filed at hearing and answer to amended petition. Copies served.

Mar. 5—Transcript of hearing 2/14/47 filed.

Apr. 28—Brief filed by taxpayer. Copy served.

May 16—Reply brief filed by General Counsel. Copy served.

June 30—Reply brief filed by taxpayer. 7/1/47 Copy served.

Dec. 24—Memorandum findings of fact and opinion rendered. Judge Leech. Decision will be entered for the respondent. 12/26/47 Copy served.

Dec. 29—Decision entered. Judge Leech, Div. 6.

1948.

Mar. 24—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.

Mar. 24—Proof of service filed.

Apr. 19—Statement of evidence filed by taxpayer with service acknowledged thereon.

Apr. 19—Praecipe for record filed by taxpayer with service acknowledged thereon. [1*]

*Page numbering appearing at top of page of original certified Transcript of Record.

The Tax Court of the United States

Docket No. 10427

THE DAVENPORT FOUNDATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency, LA:IT:90D:PAK, dated March 1, 1946, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation with its principal office at 674 Elliott Drive, Pasadena, California. The returns for the period here involved were filed with the Collector for the Sixth District of California.

2. The Notice of Deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on March 1, 1946.

3. Taxes in controversy are Federal corporate income tax and declared value excess profits tax as follows:

Income Tax	
1940.....	\$ 468.02
1941.....	1,415.13
1942.....	2,292.63
1943.....	2,272.00
1944.....	2,804.44
	<hr/>
	\$9,252.22

	Declared Value	Excess-Profits Tax
1941.....		\$ 409.20
1942.....		300.11
1943.....		86.30
		<hr/>
		\$ 795.61

4. The determination of tax set forth in the said Notice of Deficiency is based upon the following errors:

(a) The respondent erred in failing to hold that petitioner is exempt from Federal corporate income and declared value excess profits tax under the provisions of Sections 101(6), 600, 1200 and 1201 (a)(1) of the Internal Revenue Code.

5. The facts upon which petitioner relies as a basis of this proceeding are as follows:

(a) The petitioner was organized on or about June 5, 1940, as a non-profit corporation under the provisions of Title XII, Article 1 of the General Non-Profit Corporation Laws of California, exclusively for religious, charitable, scientific, literary and educational purposes; no part of the net earnings were to inure to the benefit of any private shareholder or individual and no substantial part of the activities of which was to carry on propaganda or otherwise attempt to influence legislation.

(b) In 1940 and 1941 Levi M. Davenport and his wife, Barbara N. Davenport, transferred or caused to be transferred to petitioner properties of a total value of \$270,384.00, in part consideration for which petitioner agreed to let the Davenports use one of the properties as their living place and agreed to pay over to the Davenports or to their

daughter or granddaughter certain annuities, all of which rights retained by the Davenports and assumed by petitioner had a value not in excess of \$90,315.38, with the result [3] that petitioner received a net gift of at least \$180,068.62.

(c) Petitioner throughout its existence was and is a corporation organized and operating exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation.

(c) None of petitioner's net income was subject to income tax within the provisions of Sections 101(6), 600, 1200 and 1201(a)(1) of the Internal Revenue Code for any of the years 1940 to 1944, inclusive.

Wherefore, petitioner prays that the Court hear this proceeding and determine that petitioner is exempt from Federal corporate income and declared value excess profits tax for the years 1940 to 1944, inclusive.

/s/ MELVIN D. WILSON,

/s/ JOSEPH D. PEELER,

Counsel for Petitioner. [4]

State of California,
County of Los Angeles—ss.

Fred A. Flora and J. E. Steinour, being duly sworn, depose and say that they are the Secretary and Treasurer of The Davenport Foundation and are duly authorized to verify the foregoing petition; that they have read the foregoing petition and are familiar with the statements contained therein and that the statements contained therein are true except those stated to me upon information and belief and that those they believe to be true.

/s/ FRED A. FLORA,

/s/ J. E. STEINOUR.

Subscribed and Sworn to before me this 29th day of March, 1946.

[Seal] /s/ NORMA LUND,

Notary Public in and for Said
County and State.

My Commission Expires August 8, 1949. [5]

EXHIBIT A

Treasury Department, Internal Revenue Service,
417 South Hill Street, Los Angeles 13, California. Office of Internal Revenue Agent in Charge, Los Angeles Division. LA:IT:90D:PAK.

Mar. 1, 1946.

The Davenport Foundation
674 Elliott Drive
Pasadena, California

Gentlemen:

You are advised that the determination of your income tax liability for the taxable years ended

December 31, 1940, 1941, 1942, 1943 and 1944, discloses a deficiency of \$9,252.22, and that the determination of your declared value excess-profits tax liability for the taxable years ended December 31, 1941, 1942 and 1943, discloses a deficiency of \$795.61, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form,

or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,

Commissioner.

By GEORGE D. MARTIN,

Internal Revenue Agent in

Charge.

Enclosures :

Statement

Form of waiver. [7]

STATEMENT

LA:IT:90D:PAK

The Davenport Foundation, 674 Elliott Drive
Pasadena, California

Tax Liability for the Taxable Years Ended
December 31, 1940 to 1944, inclusive

Income Tax			
Year	Liability	Assessed	Deficiency
1940	\$ 468.02	\$0.00	\$ 468.02
1941	1,415.13	0.00	1,415.13
1942	2,292.63	0.00	2,292.63
1943	2,272.00	0.00	2,272.00
1944	2,804.44	0.00	2,804.44
	<hr/>	<hr/>	<hr/>
Totals	\$9,252.22	\$0.00	\$9,252.22

Declared Value Excess-Profits Tax			
1941	\$ 409.20	\$0.00	\$ 409.20
1942	300.11	0.00	300.11
1943	86.30	0.00	86.30
	<hr/>	<hr/>	<hr/>
Totals	\$ 795.61	\$0.00	\$ 795.61

In making this determination of your tax liability, careful consideration has been given to the report of examination dated October 30, 1945.

The contention in your returns that your corporation is exempt from taxation in accordance with the provisions of section 101(6) of the Internal Revenue Code is denied.

The deduction claimed for depreciation in the amount of \$169.65 for the taxable year ended December 31, 1940, and \$339.30 for each of the taxable years [8] ended December 31, 1941, to 1944, inclusive, on property designated as 674 Elliott Drive, Pasadena, California, is disallowed. This property is occupied by Mr. Davenport as his personal residence and no rental is paid by him for the use of this property. It has been determined that the deductions claimed for depreciation on this property are not allowable under Section 23(1) of the Internal Revenue Code.

In your returns you computed depreciation on certain parcels of improved real estate on the basis of the appraised values thereof at the date such properties were acquired by you. It has been determined that the correct basis for computing depreciation on these properties as provided in section 114(a) of the Internal Revenue Code is as follows:

Designation of Property	Basis Claimed In Returns		Basis Determined	
	Land	Improvements	Land	Improvements
8648 Atlantic, Southgate, Calif.....	\$ 1,020.00	\$ 2,300.00	\$ 1,020.00	\$ 1,800.00
8670 Atlantic, Southgate, Calif.....	6,630.00	14,975.00	6,630.00	16,000.00
8680 Atlantic, Southgate, Calif.....	8,160.00	17,575.00	8,160.00	14,401.77
4623 E. Gage, Bell, California.....	5,000.00	3,000.00	5,000.00	1,050.00
Bloom Street, Los Angeles, Calif.....	1,300.00	2,700.00	1,300.00	2,000.00
106 So. Broadway, Los Angeles, Calif.....	12,000.00	8,000.00	12,000.00	3,600.00
152 So. Eastman, Los Angeles, Calif.....	1,500.00	5,100.00	1,500.00	5,900.00
2326 E. Eighth St., Los Angeles, Calif.....	7,000.00	9,000.00	7,000.00	7,931.64
228 E. First St., Los Angeles, Calif.....	22,000.00	18,000.00	22,000.00	440.00
2470 E. Fourteenth St., Los Angeles, Calif. }	Leased	10,850.00	Leased	8,748.13
2530 E. Fourteenth St., Los Angeles, Calif. }				
Mason Street, Southgate, California.....	0.00	1,491.27	0.00	740.00
Totals.....	\$64,610.00	\$92,991.27	\$64,610.00	\$62,611.54

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These properties were acquired by you on or about July 1, 1940, and it has been determined that each property has a remaining useful life of 25 years from that date. The property designated as 405-11 Wall Street, Los Angeles, California, has been determined to have a useful life of 25 years from date of acquisition, July 1, 1942, instead of 40 years as shown by your returns.

The amount of excessive deductions claimed for depreciation under section 23(1) of the Internal Revenue Code is determined by the following:

	1940 (Six Mos.)	1941	1942	1943	1944
8648 Atlantic, Southgate, Calif.....	\$ 36.00	-----	-----	-----	-----
8670 Atlantic, Southgate, Calif.....	320.00	\$640.00	\$640.00	\$640.00	\$640.00
8680 Atlantic, Southgate, Calif.....	288.03	576.07	576.07	576.07	288.03
4623 E. Gage, Bell, California.....	21.00	42.00	42.00	42.00	42.00
Bloom Street, Los Angeles, Calif.....	40.00	80.00	-----	-----	-----
106 So. Broadway, Los Angeles, Calif.....	72.00	144.00	144.00	144.00	144.00
152 So. Eastman, Los Angeles, Calif.....	118.00	236.00	236.00	196.67	-----
228 E. First St., Los Angeles, Calif.....	8.80	17.60	17.60	17.60	17.60
2326 E. Eighth St., Los Angeles, Calif.....	158.63	317.27	317.27	317.27	317.27
2470 E. Fourteenth St., Los Angeles, Calif. }	174.96	349.93	349.93	349.93	349.93
2530 E. Fourteenth St., Los Angeles, Calif. }	-----	-----	-----	-----	-----
Mason Street, Southgate, California.....	14.80	29.60	29.60	29.60	7.40
405-11 Wall Street, Los Angeles, Calif.....	-----	-----	240.00	480.00	480.00
Totals (depreciation allowable).....	\$1,252.22	\$2,432.47	\$2,592.47	\$2,793.14	\$2,286.23
Depreciation claimed on these properties in your returns	1,509.84	2,865.82	2,912.44	3,016.73	2,548.47
Excessive amount claimed.....	\$ 257.62	\$ 433.35	\$ 319.97	\$ 223.59	\$ 262.24

The excessive deductions claimed are disallowed.

Adjustments to Net Income
Taxable Year Ended December 31, 1940

Net income as disclosed by return.....		\$2,745.70
Unallowable deductions:		
(a) Unallowable depreciation.....	169.65	
(b) Excessive depreciation	257.62	427.27
		<hr/>
Total		\$3,172.97
Additional deduction:		
(c) Deduction for contributions increased.....		21.36
		<hr/>
Net income adjusted.....		\$3,151.61

Explanation of Adjustments

(a) and (b) These adjustments have been previously explained.

(c) Due to the increase of net income shown above the deduction for contributions has been increased by 5 per centum of such increase, or \$21.36, in accordance with section 23(q) of the Internal Revenue Code.

Computation of Income Tax
Taxable Year Ended December 31, 1940

Net income adjusted	\$3,151.61
Normal—tax net income.....	3,151.61
Income tax:	
Normal tax—13½% of \$3,151.61.....	425.47
Defense tax—10 % of 425.47.....	42.55
	<hr/>
Correct income tax liability.....	468.02
Income tax assessed	
Original, account No. 9200902.....	None
	<hr/>
Deficiency of income tax.....	468.02

Adjustments to Net Income
Taxable Year Ended December 31, 1941

Net income as disclosed by return.....		\$5,244.12
Unallowable deductions and additional income:		
(a) Unallowable depreciation	339.30	
(b) Excessive depreciation	433.35	
(c) Net long-term capital gain in-		
creased	641.43	1,414.08
		<hr/>
Total		\$6,658.20

Additional deduction:

(d) Deduction for contributions increased.....	70.70
------------------------------------------------	-------

Net income adjusted.....	\$6,587.50
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Explanation of Adjustments

(a) and (b) These adjustments have been previously explained.

(c) In lieu of the long-term capital gain of \$39.84 reported in your return from the sale of a parcel of real estate designated as 8648 Atlantic Boulevard, Southgate, California, it has been determined that you realized a long-term capital gain of \$681.27 or an increase of \$641.43.

(d) Due to the increase in net income as shown herein in the amount of \$1,414.08 the deduction for contributions has been increased by 5 per centum thereof, or \$70.70, in accordance with section 23(q) of the Internal Revenue Code.

Computation of Declared Value Excess-Profits Tax

Taxable Year Ended December 31, 1941

Net income adjusted	\$6,587.50
Less: 10% of \$27,900.00 value of capital stock as declared in capital stock tax return for the year ended June 30, 1941.....	2,790.00

Net income subject to declared value excess-profits tax	3,797.50
Amount taxable @ 6.6% (5% of \$27,900.00).....	1,395.00

Amount taxable @ 13.2%	\$2,402.50
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Declared value excess-profits tax:

6.60% of \$1,395.00.....	\$92.07
13.2% of 2,402.50.....	317.13

Correct declared value excess-profits tax liability....	\$ 409.20
---------------------------------------------------------	-----------

Declared value excess-profits tax assessed:

Original, account No. 9200903.....	None
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Deficiency of declared value excess-profits tax.....	409.20
------------------------------------------------------	--------

Computation of Income Tax
Taxable Year Ended December 31, 1941

Net income adjusted.....	6,587.50
Normal-tax net income.....	6,587.50
Surtax net income	6,587.50
Income tax:	
Normal tax: 15% of \$5,000.00.....	750.00
17% of 1,587.50.....	269.88
	1,019.88
Surtax: 6% of 6,587.50.....	395.25
	1,415.13
Correct income tax liability.....	1,415.13
Income tax assessed:	
Original, account No. 9200903.....	None
	1,415.13
Deficiency of income tax	1,415.13

Adjustments to Net Income
Taxable Year Ended December 31, 1942

Net income as disclosed by return.....	7,080.25
Unallowable deductions and additional income:	
(a) Unallowable depreciation	339.30
(b) Excessive depreciation	319.97
(c) Long-term capital gain.....	1,241.56
	1,900.83
Total	8,981.08
Additional deduction:	
(d) Deduction for contributions increased.....	95.04
	\$8,886.04
Net income adjusted.....	

Explanation of Adjustments

(a) and (b) These adjustments have been previously explained.

(c) In lieu of the long-term capital loss of \$911.96 reported in your return from the sale of real estate designated as Bloom Street property it has been determined that you realized a long-term capital gain of \$329.60 on account of this transaction, or an increase of \$1,241.56.

(d) Due to the increase in net income of \$1,900.83 shown herein the deduction claimed for contributions has been increased by 5 per centum thereof, or \$95.04, in accordance with section 23(q) of the Internal Revenue Code.

The Davenport Foundation vs.

Computation of Declared Value Excess-Profits Tax

Taxable Year Ended December 31, 1942

Net income adjusted.....	\$8,886.04
Less: 10% of \$52,900.00 value of capital stock as declared in capital stock tax return for the year ended June 30, 1942.....	5,290.00
Net income subject to declared value excess-profits tax	3,596.04
Amount taxable @ 6.6% (5% of \$52,900.00).....	2,645.00
Amount taxable @ 13.2%.....	951.04
Declared value excess-profits tax:	
6.6% of \$2,645.00.....	\$174.57
13.2% of 951.04.....	125.54
Correct declared value excess-profits tax liability	300.11
Declared value excess-profits tax assessed:	
Original, account No. 9200904.....	None
Deficiency of declared value excess-profits tax.....	\$ 300.11

Computation of Income Tax

Taxable Year Ended December 31, 1942

Net income adjusted.....	\$8,886.04
Normal-tax net income.....	8,886.04
Surtax net income.....	8,886.04

Computation under General Rule
(Sections 14 and 15 I. R. C.)

Normal tax:

15% of \$5,000.00.....	\$750.00	
17% of 3,886.04.....	660.63	1,410.63

Surtax:

10% of \$8,886.04.....	888.60
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Total income tax under general rule.....	\$2,299.23
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Computation of Alternative Tax
(Section 117 (c) (1) I. R. C.)

	Normal Tax Net Income	Surtax Net Income
Income as above.....	\$8,886.04	\$8,886.04
Minus: Excess of net long-term capital gain over net short-term cap- ital loss.....	329.60	329.60
Ordinary income.....	8,556.44	8,556.44
Normal tax:		
15% of \$5,000.00.....	750.00	
17% of 3,556.44.....	604.59	1,354.59
Surtax:		
10% of \$8,556.44.....		855.64
Partial tax.....		2,210.23
Plus: 25% of \$329.60.....		82.40
Total alternative tax.....		\$2,292.63
Correct income tax liability (Alternative tax).....		\$2,292.63
Income tax assessed:		
Original, account No. 9200904.....		None
Deficiency of income tax.....		\$2,292.63

Adjustments to Net Income
Taxable Year Ended December 31, 1943

Net income as disclosed by return.....	\$7,577.82
Unallowable deductions and additional income:	
(a) Unallowable depreciation	\$339.30
(b) Excessive depreciation	223.59
(c) Long-term capital gain increased	826.37
Total	1,389.26
	\$8,967.08
Additional deduction:	
(d) Deduction for contributions increased.....	69.46
Net income adjusted.....	\$8,976.54

Explanation of Adjustments

(a) and (b) These adjustments have been previously explained.

(c) In lieu of the long-term capital gain of \$691.28 reported in your return from the sale of real estate, designated as 152 Eastman Street property, it has been determined that you realized a long-term capital gain from this transaction in the amount of \$1,517.65, or an increase of \$826.37.

(d) Due to the increase of \$1,389.26 in net income shown herein the deduction claimed for contributions is increased by 5 per centum thereof in accordance with section 23(q) of the Internal Revenue Code.

Computation of Delared Value Excess-Profits Tax

Taxable Year Ended December 31, 1943

Net income adjusted.....	\$8,897.62
Less: 10% of \$75,900.00 value of capital stock as declared in capital stock tax return for the year ended June 30, 1943.....	7,590.00
Net income subject to declared value excess-profits tax	\$1,307.62
Declared value excess-profits tax:	
6.6% of \$1,307.62.....	\$ 86.30
Correct declared value excess-profits tax liability....	86.30
Declared value excess-profits tax assessed:	
Original, account No. 9200605.....	None
Deficiency of declared value excess-profits tax.....	\$ 86.30

Computation of Income Tax

Taxable Year Ended December 31, 1943

Net income adjusted.....	\$8,897.62
Normal-tax net income.....	8,897.62
Surtax net income.....	8,897.62

Computation under General Rule

(Sections 14 and 15 I. R. C.)

Normal tax:

15% of \$5,000.00.....	\$750.00	
17% of 3,897.62.....	662.60	1,412.60

Surtax:

10% of 8,897.62.....	889.76
----------------------	--------

Computation of Alternative Tax
Section 117 (e) (1) I. R. C.

	Normal Tax Net Income	Surtax Net Income
Income as above.....	\$8,897.62	\$8,897.62
Less: Excess of net long-term capital gain over net short-term capital loss	1,517.65	1,517.65
Ordinary income	\$7,379.97	\$7,379.97
Normal tax:		
15% of \$5,000.00.....	\$750.00	
17% of 2,379.97.....	404.59	\$1,154.59
Surtax:		
10% of 7,379.97.....		738.00
Partial tax.....		1,892.59
Plus: 25% of \$1,517.65.....		379.41
Total alternative tax.....		\$2,272.00
Correct income tax liability (alternative tax).....		2,272.00
Income tax assessed:		
Original, account No. 9200905.....		None
Deficiency of income tax.....		\$2,272.00

Adjustments to Net Income

Taxable Year Ended December 31, 1944

Net income as disclosed by return.....	\$9,039.00
Unallowable deductions and additional income:	
(a) Unallowable depreciation	\$339.30
(b) Excessive depreciation	262.24
(c) Long-term capital gain in- creased	\$1,489.13
Total	\$2,090.67
Additional deduction:	
(d) Deduction for contributions increased.....	168.05
Net income adjusted	\$10,961.62

Explanation of Adjustments

(a) and (b) These adjustments have been previously explained.

(c) In your return there was reported a long-term capital gain of \$1,270.36 from the sale of properties, designated as 8680 Atlantic and Mason Street, during this taxable year. It has been determined that you realized a long-term capital gain of \$1,785.34 upon the sale of the property designated as 8680 Atlantic, and a long-term capital gain of \$974.15 upon the sale of the Mason Street property, or a total of \$2,759.49. The increase in long-term capital gain of \$1,489.13 is added to your income.

(d) In computing the deduction for contributions claimed in your return you did not include in income the long-term capital gain shown by your return. It has been determined that the correct deduction for contributions under section 23(q) of the Internal Revenue Code is \$576.93 instead of the amount, \$408.88, claimed in your return, or an increase of \$168.05, as shown in the following:

Net income as disclosed by return.....	\$9,039.00
Add: Contributions claimed in re- turn	408.88
Increase in income as above (items (a) (b) and (c))..	2,090.67
	<hr/>
Net income adjusted before deduction for con- tributions	\$11,538.55
Correct deduction for contributions (5% of \$11,538.55)	576.93
Deduction claimed for contributions.....	408.88
	<hr/>
Additional deduction allowed.....	\$ 168.05

Computation of Income Tax

Taxable Year Ended December 31, 1944

Net income adjusted.....	\$10,961.62
Normal-tax net income.....	10,961.62
Surtax net income.....	10,961.62

Computation under General Rule
(Sections 14 and 15 I. R. C.)

Normal tax:

15% of \$5,000.00.....	\$ 750.00	
17% of 5,961.62.....	1,013.48	1,763.48

Surtax:

10% of 10,961.62.....		1,096.16
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Total income tax under general rule.....		\$2,859.64
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Computation of Alternative Tax
(Section 117 (c) (1) I. R. C.)

	Normal Tax Net Income	Surtax Net Income
Income as above.....	\$10,961.62	\$10,961.62
Less: Excess of net long-term capital gain over short-term capital loss	2,759.49	2,759.49

Ordinary income	\$ 8,202.13	\$ 8,202.13
-----------------------	-------------	-------------

Normal tax:

15% of \$5,000.00.....	750.00	
17% of 3,202.13.....	544.36	1,294.36

Surtax:

10% of 8,202.13.....		820.21
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Partial tax		2,114.57
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Plus: 25% of \$2,759.49.....		689.87
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Total alternative tax.....		\$2,804.44
----------------------------	--	------------

Correct income tax liability (alternative tax).....		2,804.44
-----------------------------------------------------	--	----------

Income tax assessed:

Original, account No. 9200906.....		None
------------------------------------	--	------

Deficiency of income tax.....		\$2,804.44
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[Endorsed]: Filed April 1, 1946. [20]

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are Federal corporate income tax and declared value excess profits tax; denies the remainder of the allegations contained in paragraph 3 of the petition.

4. Denies the allegations of error contained in subparagraph (a) of paragraph 4 of the petition.

5. Denies the allegations of fact contained in subparagraphs (a) to (c), inclusive, of paragraph 5 of the petition. [21]

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL, ECC

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

E. C. CROUTER,
B. M. COON,

Special Attorneys,

Bureau of Internal Revenue.

BMC/ftc 5/2/46

[Endorsed]: Received and filed May 8, 1946. [22]

[Title of Tax Court and Cause.]

AMENDED PETITION

The above named petitioner hereby files its amended petition pursuant to permission granted by the Court at the hearing in Los Angeles, California, on February 14, 1947, for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency, LA:IT:90D:PAK, dated March 1, 1946, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation, with its principal office at 674 Elliott Drive, Pasadena, California. The returns for the period here involved were filed with the Collector for the Sixth District of California.

2. That Notice of Deficiency, a copy of which was attached to the original petition and marked Exhibit A, was mailed to the petitioner on March 1, 1946.

3. The taxes in controversy are Federal corporate income and declared value excess profits taxes as follows: [23]

Income Tax	
1940.....	\$ 468.02
1941.....	1,415.13
1942.....	2,292.63
1943.....	2,272.00
1944.....	2,804.44
	<hr/>
	\$9,252.22

Declared Value Excess-Profits Tax	
1941.....	\$ 409.20
1942.....	300.11
1943.....	86.30
	<hr/>
	\$ 795.61

4. The determination of tax set forth in the said Notice of Deficiency is based upon the following errors:

(a) The respondent erred in failing to hold that petitioner is exempt from Federal corporate income and declared value excess profits tax under the provisions of Sections 101(6), 600, 1200 and 1201(a) (1) of the Internal Revenue Code.

(b) In the alternative, respondent erred in failing to hold that petitioner is exempt from Federal corporate income and declared value excess profits tax under the provisions of Section 101(14), 600, 1200 and 1201(a)(1) of the Internal Revenue Code.

5. The facts upon which petitioner relies as a basis of this proceeding are as follows:

(a) The petitioner was organized on or about June 5, 1940, as a non-profit corporation under the provisions of Title XII, Article 1 of the General Non-Profit Corporation Laws of California, exclusively for religious, charitable, scientific, literary and educational purposes; no part of the net [24] earnings were to inure to the benefit of any private shareholder or individual and no substantial part of the activities of which was to carry on propaganda or otherwise attempt to influence legislation.

(b) In 1940 and 1941 Levi M. Davenport and his wife, Barbara N. Davenport, transferred or caused to be transferred to petitioner properties of a total value of \$270,384.00, in part consideration for which petitioner agreed to let the Davenports use one of the properties as their living place and agreed to pay over to the Davenports or to their daughter or granddaughter certain annuities, all of

which rights retained by the Davenports and assumed by petitioner had a value not in excess of \$90,315.38, with the result that petitioner received a net gift of at least \$180,068.62.

(c) Petitioner throughout its existence was and is a corporation organized and operating exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation.

(d) Petitioner throughout its existence was a corporation organized for the exclusive purpose of holding title to property, collecting income therefrom and turning the entire amount thereof, less expenses, over to an organization which itself is exempt from the tax imposed by this chapter. [25]

(e) None of petitioner's net income was subject to income tax within the provisions of Section 101 (6), 101(14), 600, 1200 and 1201(a) (1) of the Internal Revenue Code for any of the years 1940 to 1944, inclusive.

Wherefore, petitioner prays that the Court may hear this proceeding and determine that petitioner is exempt from Federal corporate income and declared value excess profits tax for the years 1940 to 1944, inclusive.

/s/ MELVIN D. WILSON

/s/ REX DIBBLE

Counsel for Petitioner. [26]

State of California,
County of Los Angeles—ss.

Fred A. Flora and J. E. Steinour, being duly sworn, depose and say that they are the Secretary and Treasurer of The Davenport Foundation and are duly authorized to verify the foregoing petition; that they have read the foregoing petition and are familiar with the statements contained therein and that the statements contained therein are true except those stated to me upon information and belief and that those they believe to be true.

/s/ FRED A. FLORA

/s/ J. E. STEINOUR

Subscribed and affirmed by Fred A. Flora before me this 19th day of February, 1947.

[Notarial Seal] GUY GIALARD GIACOPUZZI
Notary Public in and for Said County and State.

My commission expires July 23, 1947.

Subscribed and affirmed by J. E. Steinour before me this 21 day of February, 1947.

[Notarial Seal] HELEN M. WILLIAMS
Notary Public in and for Said County and State.

My commission expires July 21, 1950.

[Endorsed]: Filed Feb. 14, 1947. [27]

[Title of Tax Court and Cause.]

ANSWER TO AMENDED PETITION

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of

Internal Revenue, for answer to the amended petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the amended petition.

3. Admits that the taxes in controversy are Federal corporate income and declared value excess profits taxes; denies the remainder of the allegations contained in paragraph 3 of the amended petition.

4 (a) and (b). Denies the allegations of error contained in subparagraphs (a) and (b) of paragraph 4 of the amended petition. [28]

5 (a) to (e) inclusive. Denies the allegations contained in subparagraphs (a) to (e) inclusive, of paragraph 5 of the amended petition.

6. Denies each and every allegation contained in the amended petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL, ECC

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,

Division Counsel

EARL C. CROUTER,

E. A. TONJES,

Special Attorneys,

Bureau of Internal Revenue.

EAT/rng 2/26/47

[Endorsed]: Filed March 1, 1947. [29]

[Title of Tax Court and Cause.]

Petitioner, a non-profit corporation organized pursuant to a trust created in 1939 by Levi M. Davenport, is not exempt from tax under section 101 (6) and (14) of the Internal Revenue Code.

Melvin D. Wilson, Esq., and J. Rex Dibble, Esq., for the petitioner.

E. A. Tonjes, Esq., for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

Leëch, Judge: This proceeding involves Federal income and declared value excess-profits tax deficiencies, as follows: [30]

Year	Income Tax	Declared Value Excess-Profits Tax
1940	\$ 468.02	
1941	1,415.13	\$409.20
1942	2,292.63	300.11
1943	2,272.00	86.30
1944	2,804.44	

The issue is whether petitioner is exempt from income and declared value excess-profits taxes under section 101 (6) and (14) of the Internal Revenue Code. The case was submitted on a stipulation of facts and oral testimony. The facts as stipulated are so found. Additional facts are found from the evidence.

FINDINGS OF FACT

Petitioner is a corporation with its principal office at Pasadena, California. Its tax returns for the

periods involved were filed with the collector of internal revenue for the sixth California district.

On May 23, 1939, Levi M. Davenport executed an irrevocable transfer in trust of certain real and personal property to LaVerne College, a corporation, incorporated under Title XVII, Part IV, Division 1, Sections 649 to 651, Civil Code of the State of California, as trustee, and "C. Ernest Davis, Lucile Davenport Weller, J. E. Steinour, Fred A. Flora and L. E. Miller, constituting a board of directors." On the same day this board of directors adopted by-laws for the trust, called "The Davenport Foundation." On the date of the transfer such property had a value of \$261,884. On June 1, 1939, Barbara N. Davenport, wife of the donor, transferred to the trust two parcels of real estate having a value of \$8,500. [31]

The trust indenture states that the trustor is desirous of establishing a permanent foundation to be known as "The Davenport Foundation" for the purposes described therein. It provides that the only duty or obligation of the trustee shall be to hold title and perform such acts as shall be necessary to carry out the orders and directions of the board. The board shall act and constitute the board of trustees of the Foundation and shall have complete control, management and operation of the property forming the trust estate; shall receive and collect the principal and income and, after the payments and deductions hereinafter mentioned, shall pay and/or accumulate, and/or use and invest, hold, apply and distribute the same to, or for the purposes

hereinafter stated. No specific purposes are stated other than contained under certain designated headings. For instance, under the heading "Reserves" it provides:

Before distribution is made of any of the net income reserves shall be set aside as follows to wit:

- (1) 25% of the gross income for taxes, supervision and upkeep.
- (2) 12% of the gross income for replacements and betterments.

Under the heading, "Distribution of Income", it provides:

All the net income available for distribution shall be paid in monthly installments, as follows:

- (1) To the Trustor, Levi M. Davenport, the sum of Four Hundred Dollars (\$400.00) per month, for and during the term of his natural life.
- (2) To LaVerne College, a corporation, the sum of Three Hundred Dollars (\$300.00) per month for the purpose of establishing a department of Philosophy and Religion, which department shall be established at the beginning of the school year 1939-1940.
- (3) To make suitable and proper provision for the support and maintenance of J. R. Davenport, my brother, as his needs may require, not to exceed however, One Hundred Dollars (\$100.00) per month, all of

which shall be at the sole discretion of the Board of Trustees. In the event that any of my children shall come to want, the Board of Trustees shall use a portion of the income to care for them in so far as their needs may require, all of which shall also be solely within the discretion of the Board of Trustees.

- (4) To American Bible Society, with its principal office at Bible House, New York City, the sum of Three Hundred Dollars (\$300.00) per annum, payable annually at the discretion of the Board.
- (5) To the payment of annuities in such amounts as may be agreed upon between the Board of Trustees and the annuitants, who may add to this Trust.
- (6) All of the rest and residue of undistributed income shall be used by the Board of Trustees for such purposes consistant [sic] with the purposes of this trust as may be determined in the sole discretion of said Board of Trustees.

The trust indenture outlines in detail the courses to be given and taught by the Department of Philosophy and Religion and the general procedure to be adopted in teaching the subjects.

Under the heading "Reservations," the following provision is made:

It is understood and agreed that during the lifetime of the Trustor, Levi M. Davenport, that

the Trustor shall have the right to the use and occupation, rent free, of the home now occupied by him at 674 Elliot Drive, Pasadena, California, or some other home of similar rental value.

The trust indenture also contains provisions covering "Vacancies on Board of Trustees," "Compensation of Trustees," "Additions to the Foundation," "Change of Beneficiary" and "Powers of Trustees." There is a provision restricting each beneficiary from "anticipating, encumbering, alienating or in any other manner assigning his or her, or its interest" in either principal or income. After the death of the trustor and the individual beneficiaries, the board of trustees is authorized to incorporate the Foundation, in which event La Verne College shall convey all of its title in the trust estate to such corporation upon request of the board.

Included in the real estate conveyed to the trust by Levi M. Davenport was a parcel known as the "First Street property." After the trust was created the trustor desired to improve such property. The trustee was advised by its attorney that it could not borrow money for the benefit of the trust, but it could reconvey the property to the trustor, have him borrow the money and make the improvements and then reconvey it to the trust. This plan was followed.

It was agreed by the board of trustees and the trustor that the Davenport home, which had been conveyed to the trust, had been transferred to the trust by mistake and had not been intended to be

a part of the trust at that time. Accordingly, about March 26, 1940, the trustees reconveyed this property to the trustor.

On July 8, 1940, petitioner was incorporated under the laws of California as a non-profit corporation, for the stated purpose "To act as Trustee under Christian Educational, Charitable, Eleemosynary, and other charitable trusts." [34] Specifically, petitioner was to replace La Verne College as trustee of the trust created by Levi M. Davenport. Petitioner's charter contains the usual powers and customary provisions found in corporate charters of this character. Its by-laws provide for a board of trustees, the election of officers and prescribe their powers and duties. They contain no provision for the distribution of income.

On September 5, 1940, the Davenport Foundation (the trust) adopted a resolution which, after certain preambles not here important, reads as follows:

Now Therefore Be it resolved that LaVerne College be, and it is hereby instructed to convey to The Davenport Foundation, a corporation, all of the property and assets which LaVerne College now holds under the said Declaration of Trust. Such conveyances and transfers shall be made subject to that certain Declaration of Trust of May 23rd, 1939, designated The Davenport Foundation, an unincorporated association, and the acceptance thereof by this corporation known as The Davenport Foundation shall be a recognition of the fact that the assets so transferred are subject to and accepted by this cor-

poration, subject to the terms and provisions of said Declaration of Trust.

On or about October 8, 1940, LaVerne College transferred to petitioner all the real and personal property which it held under and by virtue of the trust created by Levi M. Davenport and Barbara N. Davenport, his wife.

On or about May 31, 1941, Levi M. Davenport and his wife transferred to petitioner the Davenport "home place." Contemporaneously therewith, petitioner and the transferors executed an annuity agreement whereby (a) the transferors retained the right to use the home place for their lives; (b) petitioner agreed to pay Lucile Davenport Weller, transferors' daughter, an annuity of \$100 per month, and upon her death to pay to her daughter, Dorothy Mae Weller, an annuity of \$100 per month. Petitioner's obligation to pay such annuities was absolute and not dependent upon whether petitioner had net income or net earnings. The annuity to Dorothy Mae Weller is to be reduced under certain conditions not now material. No rent was ever paid to petitioner with respect to such home place. The value of the home place on May 31, 1941, was \$15,500 and its fair rental value was \$1,500 per annum. The taxes and other expenses of upkeep, all of which were paid by petitioner, were as follows:

Year	Taxes	Other Expenses
1941	\$481.49	\$1,040.65
1942	324.60	1,050.32
1943	296.52	113.62
1944	380.19	519.24

On or about May 31, 1941, Levi M. Davenport and his wife transferred to petitioner the aforementioned First Street property. Contemporaneously with such transfer, petitioner and the transferors executed an annuity agreement whereby Levi M. Davenport reserved the net income from such property for his life and reserved the right to designate in writing, during his lifetime, the disposition of such net income for a period not to exceed 10 years after his death. No such designation of the income was made by Levi M. Davenport. The value of the First Street property on May 31, 1941 was \$40,000 and its fair rental value was \$5,400 per annum. Petitioner never received any income from such property. The taxes thereon for the years 1940 to 1944, inclusive, were paid by Levi M. Davenport. The expenses of upkeep, paid by petitioner, were as follows: [36]

Year	Expenses
1940	\$ 8.62
1941	0.00
1942	63.02
1943	350.70
1944	1,297.78

During the years 1940 to 1944, inclusive, petitioner made donations or contributions to certain organizations which have not been established as exempt from taxation under section 101 of the Internal Revenue Code, as follows:

	1940	1941	1942	1943	1944
Phillip's China Relief					\$150.00
Radio Gospel Hour.....				\$50.00	35.00
Flora, Evangelist				8.00	
United America Defense Committee.....		\$25.00			
National Voice (Includes California Voice)			\$15.00	15.00	35.00
W. N. Miles Radio Program.....					10.00
State Wide Committee, Higher Educa- tion					2.00
Los Angeles Times.....			24.50		
Democratic Club for Willkie, Los An- geles, California	\$14.18				
Jeffersonian Democrats, Los Angeles, California	10.00	25.00			
Republican Club, Los Angeles, Calif.....					25.00
Democratic Club, Los Angeles, Calif.....					25.00
Property Owners' Assn., Los Angeles, California	10.00	10.00	10.00	10.00	10.00
	<hr/> \$34.18	<hr/> \$60.00	<hr/> \$49.50	<hr/> \$83.00	<hr/> \$292.00

Petitioner paid to Lucile Weller and Homer Davenport the following amounts:

Year	Lucile Weller	Homer Davenport
1940	\$1,000	
1941	1,200	\$625.00
1942	1,200	
1943	1,200	
1944	1,200	

The payment of \$1,000 in 1940 to Lucile Weller and the payment of \$625 in 1941 to Homer Davenport were payments for the benefit of Levi M. Davenport in connection with his acquisition of certain shares of the capital stock of L. M. Davenport Company which were surrendered to him by Lucile Weller and Homer Davenport. The payments to

Lucile Weller during the years 1941 to 1944, inclusive, were made pursuant to the terms of the annuity agreement.

During the taxable period 1940 to 1944, the net income, as determined by the respondent, was as follows:

Year	Net Income
1940.....	\$ 3,151.61
1941.....	6,587.50
1942.....	8,886.04
1943.....	8,897.62
1944.....	10,961.62
	<hr/>
	\$38,484.39

During the period 1940 to 1944, inclusive, petitioner paid to organizations and institutions exempt under section 101 (6) an amount aggregating \$20,124.09.

During the taxable periods involved, petitioner was not exempt from taxation pursuant to the provisions of section 101 of the Internal Revenue Code.

OPINION

The sole question submitted is whether petitioner is exempt from taxation upon its income by virtue of section 101 (6) and (14) of the Internal Revenue Code.¹ The respondent argues that petitioner is not

¹Sec. 101. Exemptions from Tax on corporations.

The following organizations shall be exempt from taxation under this chapter—

* * * * *

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educa-

exempt under section 101 (6), since a portion of its income could and actually did inure to the benefit of private individuals. Respondent further contends that petitioner is not exempt under section 101 (14), for the reason that some portion of its income was paid to individuals or corporations not themselves exempt from tax. The material facts are not in dispute. Petitioner, a nonprofit corporation, was organized to act as trustee under charitable trusts. The properties which Levi M. Davenport and his wife had transferred under an irrevocable declaration of trust, dated May 23, 1939, were conveyed to petitioner subject to the terms and provisions of such trust. The only purposes stated in the trust instrument were to collect the income and distribute or accumulate the same as therein specified. The sum of \$400 per month was to be paid to Levi M. Davenport, the trustor, during his life; \$300 per month was to be paid to LaVerne College to establish a Department of Philosophy and Religion; in the discretion of the trustees, suitable and proper provision was to be made for the support and maintenance

tional purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

* * * * *

(14) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this chapter;

of J. R. Davenport, brother of the trustor, as his needs may require, not exceeding \$100 per month; in the event that any of the trustor's children should come to want, a portion of the income was to be used to care for them as their needs may require; \$300 per annum was to be paid to the American Bible Society; and the residue of the undistributed income was to be used for purposes consistent with the purposes of the trust. Obviously, the income of the trust was not to be devoted exclusively to charitable purposes. Nor were the purposes, other than charitable, merely incidental to the charitable purposes. *James Sprunt Benevolent Trust*, 20 B.T.A. 19; *Scholarship Endowment Foundation v. Nicholas*, 106 Fed. (2d) 552. The payments to be made to the trustor and the members of his family were at least equally the concern of the trustor. One of the dominant purposes for which the trust was created was those payments. The provision contained in the trust to the effect that the Foundation was not to be incorporated until after the death of the trustor and the other individual beneficiaries seems to confirm this view.

Petitioner contends that since the First Street property and the [40] home property were conveyed to petitioner subject to certain reserved interests and the payment of specific annuities, it falls within the rule of *Lederer v. Stockton*, 260 U. S. 3; *Emerit E. Baker, Inc.*, 40 B.T.A. 555. To these may be added the case of *Edward Orton, Jr. Ceramic Foundation*, 9 T.C. 533, decided since the filing of briefs herein. In *Lederer v. Stockton*, supra, the Supreme Court held that a hospital was not liable

for tax on income it had received from property devised to it but subject to the payment of annuities. In *Emerit E. Baker, Inc.*, supra, it was held that a corporation otherwise exempt from income tax under section 101 (6) of the Revenue Acts of 1934 and 1936 is not deprived of exemption because of payments to a donor's widow and of payment for the education of her nieces or nephews pursuant to the donor's will. The decision was based on *Lederer v. Stockton*, supra. In *Edward Orton, Jr. Ceramic Foundation*, supra, we held, under the rationale of the Baker and Lederer cases, that the Foundation was exempt from tax under the following facts: Edward Orton, Jr., deceased, by his will provided for the creation of a Foundation for aiding and promoting the science of ceramic engineering. He divided his estate into Parcel No. 1 comprised of a going business engaged in the manufacture of pyrometric cones, and Parcel No. 2, consisting of all the remaining assets of his estate. Since Parcel No. 1 contained the principal income producing properties, he directed the trustees controlling Parcel No. 1 to pay his widow the sum of \$42,000 over a period of five years. The widow, being the sole heir, had the election to [41] take under the will or under the Ohio statutes of distribution and descent which entitled her to a one-half interest in all the testator's property. She elected to take under the will, but as a condition to such election entered into a contract with the trustees whereby, after the completion of the payments of the sum of \$42,000 provided in the will, she was to be paid a life annuity of \$350 per month. The payments to the widow were a charge

upon all the assets of the Foundation. Of the sum of \$42,000, all had been paid prior to the taxable year except \$2,845.93. It was held that the Foundation was a separate distinct entity; that the payments to the widow were not the real purposes for which the Foundation was established, but were payments which had to be made to free the assets and income for use in the scientific aims of the Foundation. The instant case is readily distinguishable. If the First Street property and the home property which were transferred to petitioner, subject to reservations, were the only properties here involved, the similarity of the cases might prevent their distinguishment. The record here establishes that the First Street property and the home property were conveyed as a part of the original trust. Later, these properties were conveyed back to the trustor, and subsequently reconveyed to petitioner under certain reservations. The legality of such transactions may be somewhat doubtful since the original declaration of trust was by its terms irrevocable, and there is no evidence that the individual beneficiaries of the trust, other than the trustor, ever consented to such reconveyance. However, [42] we need not dwell on the legality of these retransfers to the trustor since additional properties were transferred under the original trust, the income from which was to be distributed to members of the trustor's family. And it does not appear that such beneficiaries ever waived or surrendered their rights under the original trust. The petitioner accepted these additional properties "subject to the terms and provisions of said Declaration of Trust."

Furthermore, this record shows that during the taxable periods a portion of petitioner's income was actually used to pay taxes and other expenses of the trustor's home and to provide an annuity of \$100 per month to trustor's daughter, Lucile Davenport Weller. Substantial sums were also paid for the upkeep of the First Street property. Since the trust was created for private as well as for public purposes, all the income of the trust corpus was not to be devoted exclusively to charitable purposes. To be classed as tax exempt under section 101 (6) of the Internal Revenue Code, a corporation must establish that no part of its income is to inure to the benefit of a private individual or stockholder. *James Sprunt Benevolent Trust, supra*; *Scholarship Endowment Foundation v. Nicholas, supra*. We conclude petitioner has not met the test prescribed in the statute.

Nor do we think petitioner qualifies as an exempt corporation under the provisions of section 101 (14) of the Code. In the taxable years a portion of petitioner's income was distributed to organizations or persons not exempt from tax. Out of its total income of \$38,484.39, [43] approximately \$20,000, only, was actually distributed to corporations or individuals properly classified as exempt from tax. To come within the purview of subdivision (14), a corporation must be organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from tax. Clearly,

petitioner does not meet this test. The respondent's determination is sustained.

Entered Dec. 24, 1947.

Decision will be entered for the respondent.

[Seal]

The Tax Court of the United States
Washington
Docket No. 10427

THE DAVENPORT FOUNDATION,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered December 24, 1947, it is

Ordered and Decided: That there are deficiencies in tax, as follows:

Year	Income Tax	Declared Value Excess-Profits Tax
1940.....	\$ 468.02	\$ ———
1941.....	1,415.13	409.20
1942.....	2,292.63	300.11
1943.....	2,272.00	86.30
1944.....	2,804.44	————

Entered Dec. 29, 1947.

/s/ J. RUSSELL LEECH,
Judge. [45]

[Title of Tax Court and Cause.]

PETITION TO REVIEW DECISION OF THE
TAX COURT OF THE UNITED STATES

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth
Circuit:

I.

Nature of the Controversy

Your petitioner, The Davenport Foundation, is a California corporation whose office and principal place of business is at 674 Elliott Drive, Pasadena, California.

On April 1, 1946, the petitioner filed with the Tax Court of the United States, pursuant to the provisions of the Internal Revenue Code, its petition requesting the redetermination of the deficiencies of corporation income and declared value excess profits taxes as shown by the official notice of deficiency mailed by the respondent under date of March 1, 1946, as follows: [46]

Year	Income Tax	Declared Value Excess Profits Tax
1940.....	\$ 468.02	\$ ——
1941.....	1,415.13	409.20
1942.....	2,292.63	300.11
1943.....	2,272.00	86.30
1944.....	2,804.44	——

The respondent filed his answer May 8, 1946, admitting the jurisdictional facts, but generally denying all of the other allegations of the petition.

On or about February 22, 1947, the petitioner filed an amended petition, having obtained permission from the Tax Court of the United States.

That the amended petition alleged that for the years 1940, 1941, 1942, 1943 and 1944 petitioner was a corporation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inured to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation and that petitioner was exempt from income tax under the provisions of Section 101(6) of the Internal Revenue Code and was exempt from declared value excess profits tax under the provisions of Sections 600, 1200, 1201(a)(1) of the Internal Revenue Code for the above specified years.

In the alternative, the amended petition alleged that petitioner was a corporation organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount [47] thereof, less expenses, to an organization which itself is exempt from the tax imposed by this chapter and hence petitioner was exempt for the years 1940 to 1944, inclusive, from income tax under the provisions of Section 101(14) of the Internal Revenue Code and exempt from declared value excess profits tax under the provisions of Section 600, 1200 and 1201(a)(1) of the Internal Revenue Code.

The respondent within the statutory time provided therefor filed his answer to the amended petition denying all the material allegations of the amended petition, excepting the jurisdictional facts.

On the 14th day of February, 1947, the cause was tried before Hon. J. Russell Leech, Judge of the Tax Court of the United States, sitting at Los Angeles, California. Petitioner filed its opening brief, respondent filed a brief and the petitioner filed a reply brief and the cause was submitted for decision. The Tax Court of the United States rendered its memorandum decision on December 24, 1947, and the final order of determination was duly entered on December 29, 1947, finding deficiencies as set forth above. [48]

II.

Designation of Court of Review

The petitioner being aggrieved by the said opinion, decision and order, desires a review thereof in accordance with the provisions of the Internal Revenue Code by the United States Circuit Court of Appeals for the Ninth Circuit, within which Circuit is located the office of the Collector of Internal Revenue to whom the said petitioner made its income tax returns for the years 1940, 1941, 1942, 1943 and 1944.

III.

Assignment of Errors

Now comes the petitioner, The Davenport Foundation, and assigns errors in the decision of the Tax Court of the United States as follows:

1. The Tax Court of the United States erred in failing to find that the petitioner was exempt from income and declared value excess profits tax for the years 1940 to 1944, inclusive, under the provisions of Section 101(6) of the Internal Revenue Code.

2. The Tax Court of the United States erred in finding that petitioner distributed \$100.00 per month of its income to grantor's daughter, Lucile Davenport Weller. [49]

3. The Tax Court of the United States erred in failing to make a requested finding that petitioner took property subject to an annuity of \$100.00 per month reserved by the grantor for the benefit of his daughter and granddaughter.

4. The Tax Court of the United States erred in finding that petitioner was required to distribute income to members of the grantor's family.

5. The Tax Court of the United States erred in failing to find that petitioner's predecessor received property subject to a discretionary liability to pay certain amounts to the members of the grantor's family.

6. The Tax Court of the United States erred in failing to find that upon the organization of petitioner, the discretionary liability of petitioner's predecessor trust to pay amounts to members of the grantor's family, was terminated.

7. The Tax Court of the United States erred in failing to find that the members of the grantor's family were in such good financial condition that it was extremely remote that they would ever be in actual want or request payments from petitioner.

8. The Tax Court of the United States erred in finding that petitioner, in paying taxes and maintenance expenses of the Davenport home, which belonged to petitioner, was distributing some of petitioner's income to the grantor.

9. The Tax Court of the United States erred in failing to find that any improper payments made by petitioner through its manager, Levi M. Davenport, for the upkeep of the Davenport home or for the First Street property or for unauthorized contributions will be recouped by petitioner through reduction of amounts owing by petitioner to Levi M. Davenport, or by claims against his estate.

10. The Tax Court of the United States erred in failing to find that the reservation by Levi M. Davenport of the income from the First Street property was in lieu of the provisions in the original trust indenture of the reservation by him of \$400.00 per month.

11. The Tax Court of the United States erred in finding that the \$1,000.00 petitioner paid to Lucile Davenport Weller and the \$625.00 it paid to Homer Davenport were distributions of petitioner's' income to private persons.

12. The Tax Court of the United States erred in failing to find that petitioner took property of Levi M. Davenport and Barbara M. Davenport subject to the amounts of \$1,000.00 and \$625.00 payable respectively to Lucile Davenport Weller and to Homer Davenport.

13. The Tax Court of the United States erred in finding that petitioner's income was not to be devoted exclusively to charitable and educational purposes.

14. The Tax Court of the United States erred in finding that the provisions for the grantors and their family was more than incidental to the main

purpose of petitioner as a charitable, religious and educational organization.

15. The Tax Court of the United States erred in failing to find that the payments by petitioner to Phillips China Relief and to the Radio Gospel Hour and to Flora, Evangelist, were amounts spent for religious, charitable and educational work.

16. The Tax Court of the United States erred in failing to find that petitioner never paid any of the \$400.00 monthly payments provided in the original trust indenture to or for the use of the grantor, Levi M. Davenport.

17. The Tax Court of the United States erred in failing to find that the payments made by petitioner to the Property Owners Association were deductible as an ordinary and necessary expense.

18. The Tax Court of the United States erred in failing to find that petitioner was exempt from income and declared value excess profits taxes for the years 1940 to 1944, inclusive, under the provisions of Section 101(14) of the Internal Revenue Code.

19. The Tax Court of the United States erred in holding that petitioner distributed some of its income to organizations or persons not exempt from tax.

20. The Tax Court of the United States erred in holding that petitioner was not exempt under Section 101(14) because it did not distribute, during the taxable years, the entire amount of its income.

21. The Tax Court of the United States erred in rendering decision for respondent.

Wherefore, petitioner prays that said errors be corrected and the judgment and findings of said Tax Court be reversed.

/s/ MELVIN D. WILSON,
819 Title Insurance Building, Los Angeles 13, California, Counsel for Petitioner. [53]

State of California,
County of Los Angeles—ss.

I, Melvin D. Wilson, state that I am one of the petitioner's attorneys of record in the above-entitled matter and am thoroughly familiar with the facts involved in said matter; that I have read said attached petition for review; that it closely states the facts, the matter in controversy and the history of the case, to the best of my knowledge and belief.

/s/ MELVIN D. WILSON.

Subscribed and Sworn to before me this 15th day of March, 1948.

[Seal] /s/ NORMA LUND,

Notary Public in and for Said
County and State.

My Commission Expires August 8, 1949.

[Endorsed]: Filed March 24, 1948. [54]

[Title of Tax Court and Cause.]

NOTICE OF FILING PETITION TO REVIEW
DECISION OF THE TAX COURT OF THE
UNITED STATES

To: Commissioner of Internal Revenue, Internal Revenue Building, Washington, D. C.; Charles Oliphant, Attorney for Respondent, Chief Counsel, Bureau of Internal Revenue, Washington, D. C.

You are hereby notified that on the 24th day of March, 1948, a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States heretofore rendered in the above-entitled cause, was filed with the Clerk of the Tax Court of the United States. A copy of the petition as filed is attached hereto and served upon you.

Dated March 24, 1948.

/s/ MELVIN D. WILSON,
Attorney for Petitioner, 819 Title Insurance Building, Los Angeles 13, California.

Service of the foregoing Notice of Filing and of a copy of the petition for review is hereby acknowledged this 24th day of March, 1948.

/s/ CHARLES OLIPHANT, CAR
Attorney for Respondent, Chief Counsel, Bureau of Internal Revenue.

[Endorsed]: Filed March 24, 1948. [55]

[Title of Tax Court and Cause.]

STATEMENT OF EVIDENCE

The above-entitled cause came on for hearing at Los Angeles, California, before the Honorable J. Russell Leech, Judge of the Tax Court of the United States, upon the 14th day of February, 1947; Melvin D. Wilson and Rex Dibble, Esqs., appeared on behalf of petitioner, and E. A. Tonjes, Esq., appeared on behalf of respondent. Thereupon the following proceedings were had and the parties by their attorneys submitted the following evidence.

JOSEPH A. ALLARD, JR.

having been first duly sworn as a witness on behalf of the petitioner, testified as follows:

My name is Joseph A. Allard, Jr. I am an attorney at law. I have known Levi M. Davenport since 1932 or 1933 and I helped him work out the details of The Davenport Foundation. [56]

Mr. Davenport at the time of creating petitioner's predecessor, the trust called The Davenport Foundation, furnished me with deeds and policies of title insurance covering the various properties that he desired to transfer to the trust. Included among these was a deed to the Davenport home. I prepared deeds covering all the properties described by the deeds which he gave me and title to the Davenport home was transferred to the trust. Later Mr. Davenport called my attention to the fact that by mistake the home had been included, that it was not his intention to convey the home because he

(Testimony of Joseph A. Allard, Jr.)

had some matters to work out with his daughter, Lucile Davenport Weller, and until he had worked out these problems with her he wanted to retain the home; that he had given each of his two sons about \$35,000.00 but had given his daughter much less than that. For that reason he wanted the home back until he got her "inheritance," as he put it, worked out.

On my advice the LaVerne College, which held the title, conveyed the home place back to Mr. Davenport on the theory that it had been conveyed to the College by mistake. [57]

Q. Our stipulation shows that the home eventually went to the corporation, with the contract providing for an annuity for Mrs. Weller. Is that the definite arrangement that he finally made?

A. Yes. He talked with Mrs. Weller * * * and he proposed to give her the home, provided she would agree to live in it as long as she lived, and she wouldn't accept it under those conditions, so then he suggested—or, requested that I prepare a simple annuity contract, whereby he would convey this property back into the Foundation, and provide that the Foundation would pay her, as an annuity, \$100.00 a month as long as she lived. The boys had had theirs for some time. This plan, he felt, would equalize, even though she lived long enough to get more than they actually received. They had had the benefit of what he gave them, but she had not had the benefit of very much, and he felt that would equalize it.

(Testimony of Joseph A. Allard, Jr.)

The property was reconveyed to the Foundation under an annuity agreement to pay his daughter Lucile \$100.00 a month during her lifetime. He had in mind that if each one of his children received a total of \$35,000.00 from him, that that would constitute their inheritance, which he expected to give them during his lifetime, and that everything else he had should go back into the work of God. It was very clear to me, from what he said to me, that it was his desire that eventually all of his property should go for this work after he had taken care of his children to the extent of \$35,000.00 apiece. [58]

Q. Mr. Allard, in the deed of the home to the petitioner, the use of it is reserved to the Davenports, but nothing is stated in the deed about the purpose or the use the corporation was to make of it after their lives had ceased.

Did Mr. Davenport say that the petitioner was to use the home after their deaths, for the purposes set out in the trust?

A. Yes, that was the intent, that this was to be part of the trust when their lives had terminated, and that the home should become part of the property to be used, the same as the other property was to be used, subject, of course, to the annuity to his daughter.

Some time after the First Street Property had been transferred to La Verne College, who held it as trustee under the original trust, which was not incorporated, Mr. Davenport desired to improve

(Testimony of Joseph A. Allard, Jr.)

the property, and my recollection is that he needed \$15,000.00 for the purpose of putting the improvements on the land. As attorney for the College, I was asked if they had the right to pledge their credit to borrow money for this purpose, and I said they did not. I suggested that the property be transferred back to Mr. Davenport, who [59] might borrow the money, sign the mortgage and then reconvey the property to the Foundation subject to the mortgage, and that procedure was followed. When in 1941 Mr. Davenport conveyed the First Street property over to petitioner, The Davenport Foundation, a corporation, he reserved the right to its net income for life and the right to appoint its net income for ten years after his death. In consideration therefor he gave up the right he had in the original trust indenture to receive \$400.00 per month for life.

“Q. In the original trust he gave the trustees discretionary right to help support his brother and children in need. Were these provisions cut off by the 1941 transfer of the First Street property to the petitioner?

“Mr. Tonjes: I object to the question, your Honor, on the ground that it calls for a conclusion of the witness, and that the documents speak for themselves as to what reservations were made.

“The Court: That objection seems sound.

“What is your answer?

“What the instrument does would certainly be proved by the instrument itself, not by what the witness thinks it does. [60]

(Testimony of Joseph A. Allard, Jr.)

“Mr. Wilson: Your Honor, the instrument does not say, but I think this witness can testify to other writings which indicated that it was to be cut off.

“The Court: Don’t you agree that, as to whether or not anything was retained, or what was retained by a particular instrument, is controlled by that instrument?

“Mr. Wilson: Not necessarily, your Honor.

“The Court: What is your position in this case?

“Mr. Wilson: Our position is that the provision in the original trust, that the trustees could assist his brother and his children, was that it cut off when the corporation was formed, and Mr. Davenport retained the right to appoint the income from the First Street property for ten years after his life.

“The Court: Your position is that that was the effect of the first instrument?

“Mr. Wilson: It was one of the purposes of forming the corporation and of making the general agreement with respect to the First Street property.

“The Court: You now ask this witness what? What is the question, please?

“Mr. Wilson: If it was the understanding between Mr. Davenport and the corporation that the provision [61] in the trust that the trustees could give some assistance to his brother and children was cut off by the provision by which he could appoint the income from the First Street property for ten years after his death.

(Testimony of Joseph A. Allard, Jr.)

“The Court: As we understand, the respondent’s objection is that this is in effect varying the terms of a written instrument, or might be, and that is the purpose for which it is offered.

“As we understand, the rule of this Court is that since the parties to the instrument are not in the dispute, one on either side, but that the government is on one side and the agreement on the other, that that rule does not apply. That is the rule of this Court, with which this division does not agree, but that is the rule of this Court now.

“That being so, we overrule the objection, note an exception to the respondent, but caution the witness again that we do not want his opinion as to what the understanding was, that is, what was in the mind of the individual and what was in the mind of the executive officers of the corporation, but what was said by either or both of them having to do with that. [62]

“The Witness: Your Honor, my conversations were with Mr. Davenport. I don’t recall that I had any in this regard with any of the officers of the corporation, and, at the time that the corporation was organized, it was done for two specific purposes, according to what he said to me that he wanted done.

“First, I might say that I told Mr. Davenport that I was not familiar with these matters of tax exemption, that I wouldn’t take any responsibility for the status of the corporation with respect to its

(Testimony of Joseph A. Allard, Jr.)

tax exemption, and he should consult tax counsel on that point, and he told me he had. It wasn't Mr. Wilson, however.

"He said he wanted this corporation formed for two reasons.

"First: When he first tried to borrow money on the First Street property, he found he was in difficulty, and, this being a real estate corporation, there had been constant transactions of sales and borrowing money for improvement, and that sort of thing, and he wanted to have it fixed up so it would be more simple. That was one thing.

"But, the other thing was that he wanted to get rid of all of these provisions in the original trust agreement whereby income went to individuals, because by [63] that time he had become concerned over the exempt status of the trust, because of certain income, by its provisions, going to individuals.

"So, for two reasons, he wanted the corporation formed; first, to make it more easy to borrow money and do business, and, secondly, to eliminate the income to the individuals, and that he would take care of his children in other ways, and I know that he tried to do that shortly before his death, but did not accomplish his purpose fully."

Q. (By Mr. Wilson): Mr. Allard, are you counsel for The Davenport Foundation?

A. Well, I don't know just exactly how to answer that. Sometimes they consult me, and sometimes others have been consulted, and Mr. Davenport, as you know, operated the Foundation practically as a one-man proposition in his lifetime. He

(Testimony of Joseph A. Allard, Jr.)

had some attorney in Los Angeles with whom he consulted, and he consulted with me, and the board have consulted me about some of their problems.

Q. Did you draw the instrument by which the First Street Property was transferred to Petitioner?

A. I am very certain that I did, Mr. Wilson.

Q. And the contract providing that he would get the net income for life?

A. Yes. [64]

Cross-Examination

By E. A. Tonjes:

After the First Street property was transferred to the petitioner, there were no more rights in any of the brothers or children of Mr. Davenport to obtain any payments from the corporation. That was part of the reason why Mr. Davenport wanted this corporation formed. I did not have any discussion with the brothers or children about this and did not get from them any writing or release of any rights they might have had in the property or to receive its income. All my discussions concerning this were with Mr. Davenport.

J. E. STEINOUR

having been first duly sworn as a witness on behalf of the petitioner, testified as [65] follows:

My name is J. E. Steinour. Just now I am running a factory. I have been a pastor—a minister of a church. I knew Levi M. Davenport. I am a trustee and the Treasurer of petitioner. I knew Mr. Davenport very well during his lifetime.

(Testimony of J. E. Steinour.)

I do not have any knowledge of any assignments of income made by Barbara N. Davenport during her life of property she transferred to petitioner. To the best of my knowledge no such transfer was made. She left no will.

Levi M. Davenport during his lifetime did not serve upon petitioner any notice or document indicating that he had assigned to other persons, to take effect at his death, the income from the First Street property. Two weeks before his decease he told me that he had made no assignment.

“Q. Did Mr. Davenport ever speak to you about the effect of the forming of the corporation, and the 1941 agreements relating to an annuity for his daughter, and the right to assign income to the First Street property, as having any effect on the provisions of the original trust, making some allowances for his brother and children? [66]

“Mr. Tonjes: I object to that as being wholly immaterial, your Honor. The rights of the parties, I think, are all fixed by the documents which are attached to the stipulation, and what discussion Mr. Davenport had with Mr. Steinour regarding these rights I think is wholly immaterial. I don't know what petitioner is expecting to prove by it. Maybe we can inquire into that.

“Mr. Wilson: The same thing I was after with Mr. Allard, to show that the provisions of the trust have been cut off, which provisions were for the benefit of his brother and children—they have been

(Testimony of J. E. Steinour.)

cut off by more specific arrangements made in 1941, after the corporation was formed.

“The Court: Specific arrangements between whom?

“Mr. Wilson: Mr. Davenport and the corporation, to take care of his brother and children, or anyone.

“The Court: How would you go about proving that? Do you mean to say that those arrangements were oral or in writing?

“Mr. Wilson: They were in writing.

“The Court: Wouldn't the best evidence of that be in the writing, then? [67]

“Mr. Wilson: They are the two writings. We think the one replaces the other, but they do not say so expressly. We think that was the intention and the effect.

“The Court: We are a little at a loss to see what the picture is here.

“You are now trying to show the effect, as we understand it, of an agreement here that is not incorporated in either of the agreements in evidence.

“Mr. Wilson: That is about it, that the second agreements cut off the first.

“The Court: And you propose to show that how, now? You said, as we understand, a moment ago, that the agreements—one was intended to cut off the other, to be substituted for the other, and that that agreement was in writing. Did you mean that?

(Testimony of J. E. Steinour.)

“Mr. Wilson: The statement of cutting off is not in writing. They were simply the two agreements, and we want to show that the second one was to be in lieu of the other one.

“The Court: And you propose to show that how?

“Mr. Wilson: By showing that that was the understanding and intention between Mr. Davenport and the corporation. [68]

“The Court: In conformity with what we understand our rule to be, we overrule the objection, note an exception, and direct the witness not to state what the understanding was, but what was said by Mr. Davenport on the one hand, or by the officers of the corporation on the other, from which a conclusion would be proper, but the conclusion will be for us to make, not for the witness to make.

“Mr. Tonjes: Your Honor, might I be heard briefly at the moment?

“The Court: You may.

“Mr. Tonjes: I do not understand the proposition exactly in that light. I gather from what Mr. Wilson said that he expects this witness to place an interpretation upon the effect of the second document.

“The Court: We did not so understand that.

“Mr. Wilson: Yes.

“The Court: Objection sustained. Exception to the petitioner.”

Petitioner has never paid to Mr. Levi M. Davenport the \$400.00 per month that is provided for in the original trust indenture. He received the earn-

(Testimony of J. E. Steinour.)

ings of [69] the First Street property in lieu of the \$400.00 per month. That was Mr. Davenport's intention according to his discussion with me. Mr. Davenport in transferring the First Street property back to petitioner in 1941 reserved the right to appoint the income from that property for 10 years after his death. He made this reservation so he could assign the earnings after his death for the benefit of his brother and children if he wanted to, but he made other arrangements. I cannot recall that Mr. Davenport ever stated that the right to appoint the income from the First Street property was to be in lieu of the provision of the original trust for some care of his brother and children.

Mr. Davenport managed petitioner up to the time of his death. He was the general manager of petitioner.

The remaining trustees are, since the death of Mr. Davenport, making some investigation of the books and records of petitioner. If we find any expenditures, made under the management of Mr. Davenport, which the Board of Directors and trustees of petitioner think are improper, we propose to make a claim against Mr. Davenport's estate for such amount, or to offset the debt which petitioner owed to Mr. Davenport at the date of his death.

The Phillips China Relief is an independent missionary organization. After the witness so testified, Mr. Tonjes, attorney for the government, objected to the question on the ground that the witness had not been shown to be qualified.

(Testimony of J. E. Steinour.)

“The Court: He of course knows that he is testifying only from personal knowledge. Objection overruled. Exception to the respondent.

“Mr. Tonjes: Very well.

“The Witness: I telephoned to Mr. Phillips, got his wife, this morning, and asked if they were exempt, tax exempt. She said they were.”

Mr. Phillips is a preacher. He uses the contributions for China relief. He gets contributions from the public generally and sends it for China relief.

The Property Owners Association of Los Angeles, California, is an organization that looks after taxable conditions of property and so on. It assists taxpayers in keeping down the local taxes. Petitioner made contributions of \$10.00 per year to that organization for the purpose of trying to keep down the taxes on its property. [71]

Cross-Examination

By E. A. Tonjes:

The sum of \$400.00 a month, which was to be paid to Mr. Davenport, was never paid.

Q. Do you know why it was never paid?

A. Well, up to the time of the new arrangement with the First Street Property, that he was actually giving his time as manager.

I had some discussions with Mr. Davenport concerning the \$400.00 per month to the effect that he had organized this corporation, not for profit, but it was a matter of giving away his services and his money for a righteous cause, and so he did not need

(Testimony of J. E. Steinour.)

this \$400.00, and he never drew it, up to the time of the new arrangement, and then it was worked through the First Street Property. The \$400.00 a month which we have been referring to, was provided for in a written instrument. When Mr. Davenport and I had these discussions, we both recognized that Mr. Davenport had a right to the \$400.00 a month until the new setup with the First Street Property. This was in lieu of the other. I was on the board and had a very close relationship with him. The general nature of the circumstance whereby Mr. Davenport did not receive the \$400.00 a month was that he waived the payment of it. He had a right to receive it under the first arrangement.

I got the address of the Phillips China Relief out of the telephone directory. I telephoned out there and [72] talked to Mrs. Phillips. She said that her husband would not be back until that afternoon, that he had gone away, and that the funds that had been collected had been used for the purpose that they were given for, for China relief, that they were an independent missionary organization, and were tax exempt. That is all I know about it. I didn't examine their charts. I do not know whether they were an incorporated organization.

Redirect Examination

By Mr. Wilson:

Q. Did you consider that Mr. Davenport had the right to get the \$400.00 a month under the original

(Testimony of J. E. Steinour.)

trust indenture after the new agreement in 1941 with the petitioner?

A. No. This last was in lieu—it was in lieu of the former.

Recross-Examination

By E. A. Tonjes:

I don't know whether or not there was any writing to that effect. I know of none. But I may say this, that the fact of his never drawing any money would indicate that this last arrangement superseded the other one.

MRS. LUCILE WELLER

having been first duly sworn as a witness on behalf of the petitioner, testified as follows: [73]

My name is Mrs. Lucile Weller. I am a daughter of Levi M. Davenport. Many years ago some stock of the L. M. Davenport Company was issued to me and to my brothers. The L. M. Davenport Company was liquidated about the time my father organized The Davenport Foundation. I received a check for \$1,000.00 from my father on account of the stock I had in the L. M. Davenport Company.

Q. Were you a stockholder of L. M. Davenport Company when it liquidated?

A. I guess so, if I held the certificate.

Q. Did you get any of its assets?

A. He cashed this stockholder's certificate for me, just before he began giving me \$600.00 a month on my annuity, which started January 1, 1941.

(Testimony of Mrs. Lucile Weller.)

The Court: Well, do you know what happened? You got some money. From whom did you get it? Where did it come from?

The Witness: I got one thousand dollars.

The Court: From whom?

The Witness: On this certificate, from my father, and he paid me checks, and I didn't pay any attention whether they were Davenport Foundation checks or whether they were his personal checks, because he had both accounts, but I certainly know where that money came from. [74]

The Court: Where did it come from?

The Witness: It came from my father.

I do not know about any appointment my father may have made with respect to the income of the First Street property to take effect after his death.

I have one child—a daughter—who is a professional woman and is not dependent upon me. I have a husband and he is able-bodied. The combined income of my husband and myself is more than enough to take care of us so we have had enough to share with others. I am not worried about the future. My daughter is a high school teacher and receives a salary of \$240.00 or \$250.00 a month. She is married and her husband is working at his doctor's degree at the university and he receives a school allowance from the federal government.

The assets of my husband and myself are worth from \$85,000.00 to \$100,000.00. My husband is [75] employed as an insurance salesman. He is a retired agriculturist and has just recently gone into the insurance business.

(Testimony of Mrs. Lucile Weller.)

Barbara N. Davenport, the wife of Levi M. Davenport, died in November, 1943.

My brother, Ralph Davenport, has an important position with the gas company. He receives a very good salary and has a responsible position on the West Coast. He does not have a large family. He lives in a large house and has a high standard of living.

The Court: What do you mean by gets a very good salary?

The Witness: I couldn't tell you what it was, but he has a responsible position.

Q. (By Mr. Wilson): Would you say \$20,000.00 a year? Would you guess it was \$20,000.00 a year?

A. I don't know. I couldn't say. [76]

Cross-Examination

By E. A. Tonjes:

My father gave me some stock in the L. M. Davenport Company when I was very young, probably a certificate for 10 shares at \$100.00 per share. I held the stock from approximately 1922 until I turned it back to him at his request. I considered myself the owner of that certificate all of those years. I did not receive any dividends on it. I got the \$1,000.00 about the time he dissolved the L. M. Davenport Company and formed The Davenport Foundation. I don't know whether I turned it back to my father as an individual or to the corporation. I do not know how much the stock was worth but I got [77] \$1,000.00 for it.

(Testimony of Mrs. Lucile Weller.)

In 1941 my daughter was teaching and got her salary of \$250.00 a month and my husband was a farmer. We had a comfortable income from rental property in Los Angeles. I sold one of our properties about that time and put the money out at interest. My personal income would be around about \$100.00 per month in 1941. I cannot tell what our income was in 1942, 1943 or 1944. We were farming and during these war years farmers' income was very comfortable.

HOMER H. DAVENPORT

having been first duly sworn as a witness on behalf of the petitioner, testified as follows:

My name is Homer H. Davenport. I am a son of Levi M. Davenport. In 1941 The Davenport Foundation paid to me \$625.00 for the 10 shares of the L. M. Davenport Company which I had. The L. M. Davenport Company has been dissolved and I was a stockholder at the date of dissolution. I did not get a share of the assets which amounted to \$400,000.00 to \$500,000.00, including real estate. All of the real estate that came from the L. M. Davenport Company went into The Davenport Foundation. The Davenport [78] Foundation, the petitioner, paid me the \$625.00 because the L. M. Davenport Company had just been dissolved and this was my share of the assets.

I have no knowledge that L. M. Davenport prior to his death made any assignment or appointment to take effect after his death of the income from the

(Testimony of Homer H. Davenport.)

First Street property. I do not know anything about the affairs of Barbara N. Davenport at all.

I have two pieces of property, one worth about \$12,000.00 and the other one about \$10,500.00. I owe a few thousand dollars on them. In addition, I have a half interest in a piece of property on Fourth Street. The value of my half interest is \$14,000.00. It produces an income of about \$260.00 a month which is used up in paying off the loans. The loan against said property is about \$5,000.00. I am not employed and I am not engaged in business. I have been in very poor health.

Cross-Examination

By E. A. Tonjes:

In 1940 my income was between \$1,600.00 and \$1,700.00. In 1941 it was approximately the same, also in 1942. In 1943 it was probably \$3,500.00, also for 1944. I am married and have no children. My wife has no independent [79] income. I do not think I could estimate my net worth in the years 1940 to 1944.

JOHN R. DAVENPORT

having been first duly sworn as a witness on behalf of petitioner, testified as follows:

My name is John R. Davenport. I am a brother of Levi M. Davenport. I have no knowledge of any appointment by Levi M. Davenport during his life to take effect after his death of any of the income from the First Street property.

(Testimony of John R. Davenport.)

I have property worth \$18,000.00 to \$20,000.00 net. I get about \$200.00 a month from it. I do not have any children or dependents. I am 71 years of age. My property is sufficient to keep me.

Cross-Examination

By E. A. Tonjes:

In 1940 I worked and had an income of about \$250.00 per month and also in 1941 and 1942 and until August of 1943 when I quit. In addition, I had my property income. I would estimate that my total income for the years 1941, 1942 and 1943 was between \$4,000.00 and \$5,000.00 per year until I quit working in 1943 after which it was about \$3,500.00 per year.

In 1940 I estimate that I was worth about \$8,000.00 and about the same in 1941, also in 1942. In 1943 I was probably worth \$12,000.00 to \$14,000.00 and in 1944 it had gone up to \$15,000.00.

FRED A. FLORA

having first affirmed as a witness on behalf of the petitioner, testified as follows:

My name is Fred A. Flora. I am a minister—a pastor of a church. I am the Secretary of The Davenport Foundation, the petitioner, also one of the Directors, and have been since the organization.

The National Voice is a temperance paper passing out temperance information.

(Testimony of Fred A. Flora.)

The Radio Gospel Hour, Dr. M. H. Fagan, is a minister. I know him well. He ministers in the Country Church of Hollywood and carries on a radio program. This is a faith work, as I understand it, supported by the free gifts of the folks who listen. His radio program is dependent on the support of the listening public. He represents that the contributions will be used solely for that purpose. [81]

In 1943 The Davenport Foundation, the petitioner, made a payment on its books called "Flora, Evangelist." This was not a personal contribution to me but it was given at a meeting in my church when we were having a special meeting promoting religious things and was given in an offering. It did not accrue to me personally but went to the carrying on of the church work. Contributions to the church of which I am a pastor are for religious and charitable work.

Cross-Examination

By E. A. Tonjes:

As a director of The Davenport Foundation I did not participate in a discussion of the contributions to be made by that corporation. Mr. Davenport was the founder of it and he directed where the contributions were to be made and I was not particularly consulted with reference to them.

MRS. ELIZABETH CRIPPEN

having been first duly sworn as a witness on behalf of the petitioner, testified as follows:

My name is Mrs. Elizabeth Crippen. I am a certified public accountant. I have audited and kept the [82] books of The Davenport Foundation, the petitioner, for the last several years.

The Davenport Foundation has not entered on its books any rent received from Mr. or Mrs. Davenport for their use of the Davenport home.

Cross-Examination

By E. A. Tonjes:

The Davenport Foundation, the petitioner, paid out taxes and certain amounts of other expenses on the Davenport home for the years 1941 to 1944.

Thereupon upon the joint motion of the petitioner and the respondent there was introduced into evidence the following exhibits which are made a part of this statement of evidence:

Joint Exhibit 1-A—copy of declaration of trust. Attached to the declaration of trust was Schedule A which described all the real and personal property which constituted the trust corpus and which Levi M. Davenport and Barbara N. Davenport transferred and conveyed to The Davenport Foundation on May 23, 1939. The description of said property is not considered necessary for the purpose of this record except to state that it included the "Davenport home," and the "First Street prop-

erty." The [83] by-laws of the trust called The Davenport Foundation, are a part of Joint Exhibit 1-A.

Joint Exhibit 2-B—deed dated June 1, 1939, from Barbara N. Davenport and Levi M. Davenport to LaVerne College. This was an outright deed of property which had belonged to Barbara N. Davenport. Not considered necessary to print the deed in this statement of evidence.

Joint Exhibit 3-C—deed dated June 1, 1939, from Barbara N. Davenport to LaVerne College. [84]

This was an outright deed of property which had belonged to Barbara N. Davenport. Not considered necessary to print the deed in this statement of evidence.

Joint Exhibit 4-D—agreement dated June 1, 1939, between Barbara N. Davenport and LaVerne College for the use of the property covered by Joint Exhibits 2-B and 3-C and the reservation from such transfers.

Joint Exhibit 5-E—copy of deed from LaVerne College to L. M. Davenport of the First Street property. Also copy of the resolution of the executive committee of the Board of Trustees of LaVerne College authorizing said transfer. Descriptions and acknowledgment omitted from both exhibits.

Joint Exhibit 6-F—copy of resolution of the Board of Directors of the trust making a request of LaVerne College that it deed the First Street property to Levi M. Davenport for certain purposes. Description omitted. [85]

Joint Exhibit 7-G—copy of deed dated March 26, 1940, from LaVerne College to Levi M. Davenport of the Davenport home. Description and acknowledgment omitted.

Joint Exhibit 8-H—copy of the articles of incorporation of The Davenport Foundation, petitioner. The corporation was formed July 8, 1940, under Title XII, Article 1 of the General Non-Profit Corporation Law of the State of California.

Joint Exhibit 9-I—copy of the by-laws of The Davenport Foundation, petitioner, adopted September 5, 1940. [86]

Joint Exhibit 10-J—copy of resolution adopted by the Board of Directors of the trust on September 5, 1940, requesting LaVerne College, trustee, to deed the property which it had on hand and had received from Levi M. Davenport and Barbara N. Davenport to petitioner, The Davenport [87] Foundation, a corporation.

Joint Exhibits 11-K and 12-L—copies of deeds from LaVerne College to the petitioner of properties which had been received from Levi M. Davenport and Barbara N. Davenport or acquired in exchange therefor or purchased from the proceeds thereof. Descriptions and acknowledgments omitted. It was stipulated that LaVerne College also transferred to the Davenport Foundation, petitioner, on or about October 8, 1940, any and all personal property it held as trustee and which it had received from Levi M. Davenport or Barbara N. Davenport.

Joint Exhibit 13-M—copy of deed dated May 31, 1941, from Levi M. Davenport and Barbara N. Davenport of the Davenport home to petitioner. Description and acknowledgment omitted.

Joint Exhibit 14-N—copy of an agreement dated June 23, 1941, between petitioner and Levi M. Davenport and Barbara N. Davenport relative to the Davenport home which was in effect until the date of the death of said natural persons.

Joint Exhibit 15-O—copy of a deed dated May 31, 1941, from Levi M. Davenport and Barbara N. Davenport to petitioner of the First Street property. Description and acknowledgment omitted.

Joint Exhibit 16-P—copy of agreement dated June 23, 1941, between petitioner and Levi M. Davenport and Barbara N. Davenport relative to the First Street property.

Joint Exhibit 17-Q—a statement of the taxable net income, per Revenue Agent's Report, and the book net income of petitioner for the period July 1, 1940, to December 31, 1944; also statement of the amounts paid to Lucile Weller under the agreement of June 23, 1941, being Joint Exhibit 14-N.

It was stipulated between the parties that the properties, real and personal, involved in the transfer by Levi M. Davenport to the trust, The Davenport Foundation, and from the trust to petitioner or directly from Levi M. Davenport to petitioner were valued at the dates of transfers, at \$261,-884.00.

It was further stipulated that the names and birth dates of Levi M. Davenport's closest relatives are as follows: [89]

Name	Birthdate
Levi M. Davenport.....	8/ 4/61
Barbara N. Davenport (wife).....	10/28/67
Lucile D. Weller (daughter).....	5/20/93
Dorothy M. Weller Halverstock (granddaughter).....	11/22/22
Ralph M. Davenport (son).....	9/22/95
Geraldine Davenport Alsup (granddaughter).....	11/30/22
Glenn Davenport (grandson).....	11/18/29
Homer H. Davenport (son) (no children).....	3/29/02
John R. Davenport (brother).....	2/28/76

It was stipulated that the value of the First Street property on May 23, 1939, was \$40,000.00 and at that time it was rented for a fair gross rental of \$5,400.00 per year. The taxes for 1939 were \$526.52 and the expenses of upkeep were as follows:

1940.....	\$ 8.62
1941.....	_____
1942.....	63.02
1943.....	350.70
1944.....	1,297.78

Levi M. Davenport paid the taxes on the First Street property for the years 1940 to 1944, inclusive, but petitioner paid the above-mentioned upkeep expenses for the years 1940 to 1944, inclusive. [90]

It was stipulated that the value of the First Street property on May 31, 1941, was \$40,000.00 and at that time it was rented for a fair gross rental of \$5,400.00 per year. The taxes for 1941 were \$450.62.

It was stipulated that the value of the Davenport home as of May 31, 1941, was \$15,500.00 and the fair rental value thereof was \$1,500.00 per year. The taxes and other expenses of upkeep of said property were as follows:

Year	Taxes	Other Expenses
1941	\$481.49	\$1,040.65
1942	324.60	1,050.32
1943	296.52	113.62
1944	380.19	519.24

It was further stipulated that the value of properties transferred to petitioner's transferor on June 1, 1939, by Barbara N. Davenport was \$8,500.00 and the fair rental value thereof was \$740.00 per year.

It was further stipulated that Levi M. Davenport turned over to petitioner in the years 1940 to 1944, inclusive, \$432.25 which was part of the money he received from renting rooms in the Davenport home.

It was further stipulated that in 1940 petitioner paid Lucile Weller, daughter of Levi M. Davenport, [91] \$1,000.00 and in 1941 paid Homer Davenport, the son of Levi M. Davenport, \$625.00.

It was further stipulated that the \$1,000.00 paid to Lucile Weller and the \$625.00 paid to Homer Davenport were not deducted in arriving at the taxable net income or book net income in Joint Exhibit 17-Q. Further, that the gross income of the First Street property is not included as gross income in Joint Exhibit 17-Q as Levi M. Davenport collected the gross income from the First Street property from the tenants.

It was stipulated that petitioner made contributions to organizations exempt from income tax under Section 101(6) of the Internal Revenue Code as follows: [92]

1. LaVerne College.....	\$1,500.00	\$3,900.00	\$3,600.00	\$3,656.65	\$3,600.00
2. Los Angeles Tuberculosis & Health Association			2.00		
3. Pasadena War Chest.....				50.00	
4. American Red Cross.....				50.00	200.00
5. Children's Home Society of California				2.00	
6. Bible Institute of Los Angeles, Inc. (Talbot Radio Program).....			6.44		35.00
7. Gospel Broadcasting Association (Fuller Radio Program).....				5.00	45.00
8. Kings Ambassador Evangelistic Association (Chas. Johnson Radio Program)				25.00	110.00
9. Union Rescue Mission, Los Angeles, California					30.00
10. United China Relief.....				150.00	100.00
11. American Bible Society.....				175.00	500.00
12. Committee of Mercy, New York City, N. Y.....				50.00	
13. Boys Club of America.....					10.00
14. American Mission to Lepers.....					20.00
15. Gideons International.....					100.00
16. Christian Mission Alliance.....					500.00
17. Church of the Brethren.....			25.00	155.00	25.00
18. Bible Crusaders.....					100.00
19. First Hebrew-Christian Synagogue	1.00	175.00		348.00	500.00
20. Americanism Educational League..		10.00		10.00	10.00
Totals	\$1,501.00	\$3,900.00	\$3,918.44	\$4,676.65	\$5,885.00

It was further stipulated that petitioner made contributions to organizations for which no known exemption from income tax has been granted, as follows:

	1940	1941	1942	1943	1944
1. United American Defense Committee		\$25.00			
2. National Voice.....			\$15.00	\$15.00	\$ 35.00
3. Phillips China Relief.....					150.00
4. Radio Gospel Hour (Dr. M. H. Fagan)				5.00	35.00
5. W. N. Miles Radio Program.....					10.00
6. Flora, Evangelist.....				8.00	
7. State-Wide Committee, Higher Education					2.00
8. Los Angeles Times.....			24.50		
9. Democratic Club for Wilkie, Los Angeles	14.18				
10. Jeffersonian Democrats, Los Angeles	10.00	25.00			
11. Republican Club, Los Angeles, Cal.					25.00
12. Democrat Club, Los Angeles, Cal...					25.00
Totals	\$24.18	\$50.00	\$39.50	\$73.00	\$282.00

¹But see testimony of Fred A. Flora.

²But see testimony of J. E. Steinour.

It was further stipulated that the Property Owners Association of California, Los Angeles, California, is exempt from income tax under the provisions of Section 101(8) of the Internal Revenue Code.

There was introduced into evidence the following certificate:

“In the Superior Court of the State of California in and for the County of Los Angeles. No. Pasa P-7290. In the Matter of the Estate of Levi M. Davenport, Deceased.

Certificate

State of California,
County of Los Angeles—ss.

I, J. F. Moroney, County Clerk and ex-officio Clerk of the Superior Court, within and for the County and State aforesaid, do hereby certify that according to the records on file in my office, Levi M. Davenport died on or about the 6th day of January, 1947, and that said deceased died intestate according to the best knowledge, information and belief of petitioner, Ralph M. Davenport.

I further certify that Ralph M. Davenport is the duly appointed, qualified and acting Administrator of the estate of Levi M. Davenport, Deceased, and that his Letters have not been revoked and are in full force and effect on this date.

In Witness Whereof, I hereunto set my hand and affix the seal of the Superior Court this 24th day of February, 1947.

J. F. MORONEY,
County Clerk and ex-officio Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

[Seal] By J. M. GARLAND,
Deputy." [94]

There was introduced into evidence as petitioner's Exhibit 4 a certificate of the Clerk of the Superior Court of the State of California in and for the County of Los Angeles, as follows:

"In the Superior Court of the State of California in and for the County of Los Angeles. No. Pasa P-7290. In the Matter of the Estate of Levi M. Davenport, Deceased.

Certificate

State of California,
County of Los Angeles—ss.

I, J. F. Moroney, County Clerk and ex-officio Clerk of the Superior Court, within and for the County and State aforesaid, do hereby certify that according to the records on file in my office, Levi M. Davenport died on or about the 6th day of January, 1947, and that said deceased died intestate according to the best knowledge, information and belief of petitioner, Ralph M. Davenport.

I further certify that Ralph M. Davenport is the duly appointed, qualified and acting Administrator of the estate of Levi M. Davenport, Deceased, and that his Letters have not been revoked and are in full force and effect on this date.

In Witness Whereof, I hereunto set my hand and affix the seal of the Superior Court this 24th day of February, 1947.

J. F. MORONEY,

County Clerk and ex-officio Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

[Seal] By J. M. GARLAND,
Deputy." [95]

Petitioner, The Davenport Foundation, submits the foregoing as a true and correct statement of all of the evidence material to this appeal which was submitted before the Tax Court of the United States and prays that the same may be approved and filed as a part of the record in this cause.

/s/ MELVIN D. WILSON,
Attorney for Petitioner.

Service is acknowledged this 19th day of April, 1948, and agreed to.

/s/ CHARLES OLIPHANT, AWS
Chief Counsel, Bureau of
Internal Revenue. [96]

JOINT EXHIBIT 1-A

Declaration of Trust No. 1

Know All Men by These Presents:

This Agreement made and entered into this 23rd day of May, 1939, by and between Levi M. Davenport of 674 Elliot Drive, Pasadena, California, hereinafter referred to as Trustor, and La Verne College, a corporation, incorporated under Title XVII Part 4, Division 1 (Sections 649 to 651) Civil Code of the State of California, hereinafter referred to as Trustee, and C. Ernest Davis, Lucile Davenport Weller, J. E. Steinour, Fred A. Flora and L. E. Miller, constituting a Board of Directors, hereinafter referred to as the Board.

Witnesseth: That

Whereas, the Trustor is desirous of establishing a permanent foundation to be known as "The Davenport Foundation" for the purposes hereinafter provided.

Now Therefore, the Trustee hereby declares that the Trustor has transferred and delivered to it without consideration moving from the Trustee all his right, title and interest in and to the property described in Schedule "A" hereto attached and by this reference made a part hereof. [97]

All property now, or hereafter, subject to this Trust shall constitute the "Trust Estate."

The only duty, or obligation of the Trustee shall be to hold Title to the Trust Estate in Trust, subject to the management, control and direction of the Board. It's duties shall be entirely Ministerial, that

Joint Exhibit 1-A—(Continued)

is to say, it shall perform such acts as shall be necessary to carry out the orders and directions of the Board.

The Board shall act as and constitute the Board of Trustees of the Foundation and shall have complete control, management, and operation of the property forming the Trust Estate, and shall receive and collect the principal and the income of the Trust Estate, and after the payments and deductions hereinafter mentioned, shall pay and/or accumulate, and/or use and invest, hold, apply and distribute the same to, or for the purposes hereinafter stated, and shall cause the Trustee to convey and transfer the corpus or principal, or portions of the Trust Estate, together with accumulations, if any, as hereinafter provided.

Reserves

Before distribution is made of any of the net income reserves shall be set aside as follows to-wit:

- (1) 25% of the gross income for taxes, supervision and upkeep. [98]
- (2) 12% of the gross income for replacements and betterments.

Distribution of Income

All the net income available for distribution shall be paid in monthly installments, as follows:

- (1) To the Trustor, Levi M. Davenport, the sum of Four Hundred Dollars (\$400.00) per month, for and during the term of his natural life.

Joint Exhibit 1-A—(Continued)

- (2) To LaVerne College, a corporation, the sum of Three Hundred Dollars (\$300.00) per month for the purpose of establishing a department of Philosophy and Religion, which department shall be established at the beginning of the school year 1939-1940.
- (3) To make suitable and proper provision for the support and maintenance of J. R. Davenport, my brother, as his needs may require, not to exceed however, One Hundred Dollars (\$100.00) per month, all of which shall be at the sole discretion of the Board of Trustees. In the event that any of my children should come to want, the Board of Trustees shall use a portion of the income to care for them in so far as their needs may require, all of which shall also be solely within the discretion of the Board of Trustees.
- (4) To American Bible Society, with its principal office at Bible House, New York City, the sum of Three Hundred Dollars (\$300.00), per annum, payable annually at the discretion of the Board.
- (5) To the payment of annuities in such amounts as may be agreed upon between the Board of Trustees and the annuitants, who may add to this Trust.
- (6) All of the rest and residue of undistributed income shall be used by the Board of Trustees for such purposes consistent with the

Joint Exhibit 1-A—(Continued)

purposes of this trust as may be determined in the sole discretion of said Board of Trustees.

The courses to be given and taught by said department of Philosophy and Religion, shall be along the general line of the following suggested program:

Orientation

Chapel lectures and services designed to help the student adjust himself in a Christian manner to life in the school and in the world. [100]

History of

The Church,

The Church of the Brethren,

Religion,

Religious Education, all of which shall be taught from the Christian point of view.

Bible

Sound courses in the Word of God shall be the basis of the work in the whole department and should be regarded as a basic part of one's education at LaVerne College.

Philosophy

Strong courses that will give the student an evangelical, theistic point of view and unify his ideas into a harmonious Christian faith. Such courses as Ethics, the Psychology of religion, Philosophy of Religion, and the Philosophy of the Christian Religion will be included.

Joint Exhibit 1-A—(Continued)

Religious Education

Courses that will help one to become an intelligent, capable worker in the Church's great program of Christian instruction.

Sociology

Religion applied to life, to help the student to think through the practical application of the principles and teachings of the word of God as exemplified in Scriptures to the problem of our modern world, one particular addition that we desire to be made to our present offerings in this field is a good course of Rural Sociology. We need this because we have so many country churches in our brotherhood. The country is suffering throughout America today. Something needs to be done for rural life and it is a problem in which even our State and National governments are interested.

A Practical Work Program

To give opportunity for selected students to serve as Sunday School teachers, club leaders for boys and girls, mission workers etc., in a program of church work and home missions, this program to be developed perhaps in cooperation with our District Mission Board or other agencies. All teaching shall be in harmony with the philosophy of creation, according to the account in the Book of Genesis, Chapters 1 and 2. [101]

Vacancies on Board of Trustees

It is my desire that one of my children, and after they have passed on to their reward, one of my

Joint Exhibit 1-A—(Continued)

grandchildren, shall serve on the Board of Trustees, and any vacancy on said Board caused by the death of my daughter, Lucile, or any of my children, or grandchildren, shall be filled by the Board from among my surviving children and grandchildren. The Elders body of the Church of the Brethren of the District of Southern California and Arizona shall pass upon and determine the qualifications and fitness of any of my children or grandchildren, for service on said Board of Trustees, and none of my children or grandchildren shall serve upon said Board unless said Elders body shall determine that he or she is a fit and qualified person for such service. After the death of all of my children and grandchildren, such vacancies shall be filled in the same manner as provided herein for the election of the other members of the Board, and the person appointed as herein provided shall be a member of the Church of the Brethren.

All other vacancies on said Board shall be filled by nominations made by the Board of Trustees and submitted to the Elders Body of the Church of the Brethren of the District of Southern California and Arizona, from which nominations the Elders body shall fill said vacancies unless [102] said body should determine that none of the nominees are qualified, in which event the Board of Trustees shall make further and additional nominations, from which the Elders body may fill such vacancies. All the persons elected by the Elders Body as afore-

Joint Exhibit 1-A—(Continued)

said to said Board of Trustees, or appointed as herein provided, shall be persons who can by their life and conduct subscribe to the following:

1. The Divine Authority and the full and complete inspiration of the whole of the Old and New Testament Scriptures.
2. The Deity of our Lord Jesus Christ.
3. The Doctrine of the Trinity.
4. The Fall of Man and his consequent depravity and the necessity of the New Birth.
5. The sinless life of Jesus Christ, Atonement in His blood which was shed for sin, and His personal Resurrection.
6. Justification by faith in our Lord Jesus Christ.
7. Regeneration by the Word and the agency of the Holy Spirit.
8. The personality of the Holy Spirit and as the Divine Paraclete, the Comforter and [103] the Guide of the people of God.
9. Sanctification through the Word and Spirit.
10. The Personal and Visible Return of our Lord Jesus Christ, the Resurrection of the Dead, and the last judgment.
11. That the Scriptures of the Old and New Testaments are inspired of God, and are inerrant in the original writings, and that they are the supreme and final authority in faith and life, and who believe in one God, eternally existing in three persons, Father, Son, and Holy Spirit; that Jesus was begotten by the

Joint Exhibit 1-A—(Continued)

Holy Spirit, and born of the Virgin Mary, and is true God and true Man, that man was created in the image of God, that he sinned and thereby incurred not only physical death, but also that spiritual death which is separation from God; that the Lord Jesus Christ atoned for our sins according to the Scriptures, and all that believe on him, and are Baptised by Water and of the Spirit are justified by the blood that He shed on the Cross of Calvary; that Jesus was crucified, rose from the dead, and is now seated at the [104] right hand of the Father interceeding for us as your High priest and advocate; who believe in the personal and imminent return of our Lord and Saviour Jesus Christ according to the Scriptures; and believe in the bodily resurrection of the just and the unjust.

Removal From the Board of Trustees

Should any of the members of the Board of Trustees for any cause or reason become unfit to serve on the Board or become ethically, or scripturely embroiled in the evil things of this world, the remaining members of the Board may file a complaint with the Elders Body of the Church of the Brethren of the District of Southern California and Arizona. A time and place for hearing the complaint shall be set and the decision of said Elders bodies shall be final. The procedure in matters of removal shall be established by the Elders body.

Joint Exhibit 1-A—(Continued)

Reservations

It is understood and agreed that during the lifetime of the Trustor, Levi M. Davenport, that the Trustor [105] shall have the right to the use and occupation, rent free, of the home now occupied by him at 674 Elliot Drive, Pasadena, California, or some other home of similar rental value.

Compensation of Trustee

The members of the Board of Trustees shall be paid for their services at the same rate as is paid at the time for comparable services and actual expenses incurred. The amount shall be fixed by the Board.

We hope and pray that all those having to do with the management of this Foundation will have the sacrificial Spirit. Thus the work will grow and prosper, God will be glorified and our Lord will be lifted up before a dying world.

Additions to the Foundation

Others may add to this Foundation, provided the additional income shall be used in maintaining the Doctrines and Principles of our church, as herein set forth, provided however, that the donor may reserve a portion of such income for himself or herself, or for relatives during his, her, or their lifetime. [106]

Change of Beneficiary

Should LaVerne College fail to establish such department of Philosophy and Religion, and to carry

Joint Exhibit 1-A—(Continued)

out the teachings as herein enunciated, or should it be merged into or consolidated with any other Educational or Charitable Institution, or cease to exist as an institution of learning, the Trustees shall pay the income herein provided to be paid to it, to some other institution, or institutions, within our denomination as determined by said Board, and in such event the Board of Trustees shall designate some other Trustee, or Trustees to hold title to the Trust Estate and LaVerne College, or its last Board of Trustees, shall convey the title of the Trust Estate to such new Trustee so designated by said Board.

Powers of Trustees

To carry out the express purposes of this trust and in aid of its execution and the proper administration, management and disposition of the trust estate, the Board of Trustees is vested with the following additional powers and discretions.

At its option and as long as it may deem advisable, to retain any property which it may receive hereunder. [107] To manage, control, sell, convey, partition, divide, subdivide, exchange, improve, repair and to encumber by mortgage, trust deed or otherwise and in such manner and in accordance with such procedure as it may deem advisable, the trust estate or any part thereof. To lease the trust estate, or any part thereof, and to grant the right to mine or drill for and remove therefrom gas, oil, and/or any other minerals. To invest the principal (and income if accumulated) in any property,

Joint Exhibit 1-A—(Continued)

whether or not permissible by law as investment for trust funds. To determine, in its discretion, what is principal of the trust estate, gross income, or net distributable income therefrom; except that all bonuses, royalties and recoveries from mines, gas or oil leases and/or wells, all stock dividends and stock rights, and all gain or loss realized on payment, retirement or sale of stocks, notes, bonds or other securities shall inure to or fall upon principal, and all cash dividends (other than liquidating dividends stated in writing to be such by the corporation paying the same) shall go to income of the trust estate. To have respecting bonds, shares of stock and other securities, all the rights, powers and privileges of an owner, including, though without limiting the foregoing, voting, giving proxies, payment of calls, assessments and other sums deemed by the Board expedient [108] for the protection of the interests of the trust estate, exchanging securities, selling or exercising stock subscription or conversion rights, participating in foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements, voting trusts, assenting to corporate sales, leases and encumbrances. All discretions in this trust conferred upon the Board of Trustees shall, unless specifically limited, be absolute and uncontrolled and their exercise conclusive on all persons interested in this trust or the trust estate. The powers and discretions of the Board enumerated herein are not to be construed as a limitation upon its general powers and discretions but

Joint Exhibit 1-A—(Continued)

the Board of Trustees in addition thereto is hereby vested with and shall have, for the full duration of this trust, as to the trust estate, the income therefrom, and in the execution of this trust, the same and all the powers and discretions that an absolute owner of property has or may have. The right to encumber the trust estate shall be limited to 10% of the gross value thereof.

The whole title, legal and equitable, in fee, to the trust estate is and shall be vested in the Trustee as such title in the Trustee is necessary for the due execution of this trust by the Board of Trustees as herein provided. The beneficiaries, except as herein provided take no estate or interest therein and their interests [109] hereunder are personal property only, consisting of the right to enforce the due performance of this trust.

Each beneficiary hereunder is hereby restrained from anticipating, encumbering, alienating or in any other manner assigning his or her, or its interest or estate in either principal or income, and is without power so to do, nor shall such interest or estate be subject to any beneficiary's obligations or liabilities, nor to judgment or other legal process, bankruptcy proceedings or claims or creditors or others.

The Board of Trustees in its sole discretion may advise or consult with the Trustor regarding the sale or retention of properties belonging to the trust estate and the investment of sums of money constituting a part thereof, or the exercise of any of

Joint Exhibit 1-A—(Continued)

its other powers or discretions as such Board of Trustees has hereunder, and in following in whole or in part any requests, recommendations or approvals of such Trustor, the Board of Trustees shall be free from responsibility for any losses or liabilities which may result to the trust estate, the Board of Trustees, and/or any beneficiary hereunder by reason thereof. Such request, recommendation or approval shall be deemed to be duly authorized by the Trustor if contained in written instrument executed on behalf of the Trustor.

After the death of the Trustor and the individual beneficiaries herein named, the Board of Trustees is hereby authorized to incorporate the Foundation if in its sole discretion it seems best and advantageous so to do, and in such event LaVerne College shall convey all of its title in the Trust Estate to such corporation upon request of the Board.

In the event that any provision or provisions of this instrument are or are adjudged to be for any reason unenforceable the remainder hereof, disregarding such provisions, shall subsist and be carried into effect.

This trust may not be revoked nor, except as otherwise herein provided may any of the corpus of the trust estate be withdrawn.

Executed in triplicate.

In Witness Whereof the Trustor has hereunto set his hands and seal, and LaVerne College as Trustee has caused these presents to be subscribed by its

Joint Exhibit 1-A—(Continued)

President and Secretary thereunto duly authorized
this 23rd day of May, 1939.

LEVI M. DAVENPORT,
Trustor.

[Corporate Seal]

LA VERNE COLLEGE,
By EDGAR ROTHROCK,
President,
By J. D. BRANDT,
Secretary. [111]

The undersigned Trustor does hereby certify that said Declaration of Trust fully and correctly sets out the terms and trusts under which the Trust Estate is to be held, managed and disposed of by the Board of Trustees therein named, and does hereby consent to approve, ratify and confirm the same in all particulars.

LEVI M. DAVENPORT,
Trustor.

I, Barbara N. Davenport, wife of the Trustor, Levi M. Davenport, do hereby certify that I have read the above Declaration of Trust and I hereby agree, consent to, approve and ratify the same in all particulars.

BARBARA N. DAVENPORT.

The undersigned designated as the Board of Trustees to manage, control and operate the Foundation and the Trust Estate, do hereby each agree to act as a member of said Board and to be bound

by the terms and provisions of the said Declaration of Trust.

C. ERNEST DAVIS,
LUCILE DAVENPORT
WELLER,
FRED A. FLORA,
J. E. STEINOUR,
L. E. MILLER. [112]

BY-LAWS OF
THE DAVENPORT FOUNDATION

By-Laws and Regulations, Except as Otherwise Provided by Statute or the Declaration of Trust Under Which the Same was Established.

Article I.

Section 1. Principal Office. The principal office for the transaction of business of the Foundation is hereby fixed at in the City of Pasadena, County of Los Angeles, State of California.

The Board of Trustees shall have power and authority to change said principal office from one location to another, and the Secretary shall note any such change opposite this Section.

Article II.

Section 1. Trustees. Subject to such limitations as may be prescribed by law all of the powers of the Foundation shall be exercised by, [113] or under the authority of and the business and the affairs of the Foundation shall be controlled by the Board of Trustees. Without prejudice to such general powers, but subject to the same limitations, it is

hereby expressly declared that the Board of Trustees shall have the following powers:

First: To select and remove all the other officers, agents and employees of the Foundation, prescribe such powers and duties for them as may not be inconsistent with law, the Declaration of Trust or the By-Laws, fix their compensation and require from them security for faithful service.

Second: To conduct, manage and control the affairs and business of the Foundation, and to make such rules and regulations therefor not inconsistent with law, the Declaration of Trust, or the By-Laws, as they may deem best.

Third: To borrow money and incur indebtedness and to cause to be issued therefor in the name of the Foundation, promissory notes, deeds of Trust, mortgages, pledges, [114] hypothecations, or other evidence of debt, and securities therefor. Subject to the limitations contained in the Declaration of Trust.

Fourth: To appoint an Executive Committee and other committees and to delegate to the executive committee any of the powers and authority of the Board in the management of the business and affairs of the Foundation. The Executive Committee shall be composed of two or more members of the Board of Trustees.

Section 2. Number and Qualification of Trustees. The authorized number of Trustees shall be five (5), and their qualifications shall be as set forth in the Declaration of Trust.

Section 3. Election and Term of Office. The

members of the first Board of Trustees shall hold office until their successors are elected and qualified. They shall be elected, and vacancies shall be filled as provided in the Declaration of Trust.

Section 4. Place of Meeting. Regular meetings of the Board of Trustees shall be held at Pasadena, California, or at such other place as the Board of Trustees shall designate by Resolution or by written consent of all members of the Board.

Section 5. Organization Meeting. Immediately following the execution of the Declaration of Trust by [115] the members of the Board of Trustees, and annually thereafter, the Board shall hold a regular meeting for the purpose of organization, election of officers and the transaction of the business. Notice of such meeting is hereby dispensed with.

Section 6. Regular Meetings. The regular annual meeting of the Board of Trustees shall be held on the third day of January at 9:30 o'clock A.M. of said day of each year, provided however, should said day fall upon a legal holiday then said meeting shall be held at the same time on the next day thereafter ensuing which is not a legal holiday.

Other Regular Meetings. Other regular meetings of the Board shall be held within call on the first Tuesday of April, July and October of each year, at 9:30 o'clock A.M. of said day; provided, however, should said day fall upon a legal holiday, then said meeting shall be held at the same time on the next day thereafter ensuing, which is not a legal holiday. Notice of all such regular meetings of the Board of Trustees is hereby dispensed with.

Section 7. Special Meetings. Special meetings of the Board of Trustees for any purpose or purposes shall be called at any time by the President or if he be absent or unable, or refuses to act by any Vice-President or by two Directors. [116]

Written notice of the time and place of special meetings shall be delivered personally to the Trustees or sent to each Trustee by mail or other form of written communication, charges prepaid, addressed to him at his address as it is shown upon the Records of the Foundation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the Trustees are regularly held. In case such notice is mailed, or telegraphed, it shall be deposited in the United States Mail, in any place in the County of Los Angeles, or delivered to any Telegraph Company in any place in Los Angeles County, California, at least three days prior to the time of the holding of the meeting. In case such notice is delivered as above provided; it shall be so delivered at least three days prior to the time of the holding of the meeting. Such mailing, telegraphing or delivery as above provided shall be due, legal and personal notice to such Trustee. [117]

Section 8. Notice of Adjournment. Notice of the time and place of holding an adjourned meeting need not be given to absent Trustees if the time and place be fixed at the meeting adjourned.

Section 9. Entry of Notice. Whenever any Trustee has been absent from any special meeting of the Board of Trustees, an entry in the minutes to the effect that notice has been duly given shall be

conclusive and incontrovertible evidence that due notice of such special meeting was given to such Trustee, as required by law and the By-laws of the Foundation.

Section 10. Waiver of Notice. The transactions of any meeting of the Board of Trustees, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the Trustees not present sign a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be [118] filed with the records or made a part of the minutes of the meeting.

Section 11. Quorum. A majority of the authorized number of Trustees shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the Trustees present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Trustees, unless a greater number be required by law.

Section 12. Adjournment. A quorum of the Trustees may adjourn any Trustees' meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the Trustees present at any Trustees' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

Section 13. Fees and Compensation. Trustees shall not receive any stated salary for their services as Trustees, but, by resolution of the Board, a fixed fee, with or without expenses [119] of attendance, may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any Trustee from serving the Foundation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefor. All of which shall be subject, however, to the terms and provisions of the Declaration of Trust.

Article III.

Section 1. Officers. The officers of the Foundation shall be a President, a Vice-President, a Secretary, and a Treasurer. The Foundation may also have, at the discretion of the Trustees, a chairman of the Board, one or more additional Vice-Presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article. All officers must be Trustees. One person may hold two or more offices, except those of President and Secretary.

Section 2. Election. The officers of the Foundation, except such officers as may be [120] appointed in accordance with the provisions of Section 3 or Section 5 of this Article, shall be chosen annually by the board of trustees, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

Section 3. Subordinate Officers, etc. The Board

of Trustees may appoint such other officers as the business of the Foundation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the By-laws or as the Board of Trustees may from time to time determine.

Section 4. Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the Trustees at the time in office, at any regular or special meeting of the Trustees, or except in case of an officer chosen by the Board of Trustees, by any officer upon whom such power of removal may be conferred by the Board of Trustees.

Any officer may resign at any time by giving written notice to the Board of Trustees or to the President, or to the Secretary of the Foundation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause, shall be filled in the manner prescribed in the By-laws for regular appointments to such office.

Section 6. Chairman of the Board. The chairman of the Board, if there shall be such an officer, shall, if present, preside at all meetings of the Board of Trustees, or prescribed by the By-laws.

Section 7. President. Subject to such super-

visory powers, if any, as may be given by the Board of Trustees to the chairman of the [122] Board, if there be such an officer, the president shall be the chief executive officer of the Foundation and shall, subject to the control of the Board of Trustees, have general supervision, direction and control of the business and officers of the Foundation. He shall preside at all meetings of the Trustees in the absence of the chairman of the Board. He shall be ex-officio a member of all the standing committees including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of president of a Foundation, and shall have such other powers and duties, as may be prescribed by the Board of Trustees or the By-laws.

Section 8. Vice-President. In the absence or disability of the president, the vice-presidents in order of their rank as fixed by the Board of Trustees, or if not ranked, the vice-president designated by the Board of Trustees, shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to [123] all the restrictions upon, the president. The vice-presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Trustees or the By-laws.

Section 9. Secretary. The secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board of Trustees may order, of all meetings of trustees, with the

time and place of holding, whether regular or special and if special, how authorized, the notice thereof given, the names of those present at trustees' meetings, and the proceedings thereof.

The Secretary shall give, or cause to be given, notice of all the meetings of the Board of Trustees required by the By-laws or by law to be given, and shall have such other powers and perform such other duties as may be prescribed by the Board of Trustees or the By-laws. [124]

Section 10. Treasurer. The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Foundation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, and surplus. The books of account shall at all times be open to inspection by any Trustee.

The treasurer shall deposit all moneys and other valuables in the name and to the credit of the Foundation with such depositaries as may be designated by the Board of Trustees. He shall disburse the funds of the Foundation as may be ordered by the Board of Trustees, shall render to the president and Trustees, whenever they request it, an account of all of his transactions as treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board of Trustees or the By-laws. [125]

Article IV.

Miscellaneous

Section 1. Checks, Drafts, etc. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Foundation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Trustees.

Section 2. Annual Report. The Board of Trustees of the Foundation shall cause to be sent to the District Conference of the Church of the Brethren of the Southern District of California and Arizona not later than twenty days before the Annual Meeting of said District Conference, an annual report of the business of the Foundation.

Section 3. Contract, etc., How Executed. The Board of Trustees, except as in the By-laws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Foundation, and such authority may [126] be general or confined to specific instances; and unless so authorized by the Board of Trustees, no officer, agent or employee shall have any power or authority to bind the Foundation by any contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

Article V.

Amendments

Section 1. Power of Trustees. New By-laws may be adopted or these By-laws may be amended or repealed by the Board of Trustees. [127]

Certificate of Secretary

I, the undersigned, do hereby certify:

(1) That I am the duly elected and acting secretary of The Davenport Foundation; and

(2) That the foregoing By-laws, comprising Fifteen (15) pages constitute the original By-laws of said Foundation as duly adopted at the first meeting of the Board of Trustees thereof duly held Tuesday, May 23, 1939.

In Witness Whereof, I have hereunto subscribed my name this 23rd day of May, 1939.

FRED A. FLORA,

Secretary [128]

JOINT EXHIBIT 4-D

TRANSFER AND ACCEPTANCE OF
ADDITIONAL PROPERTY UNDER TRUST

Addition No. 1 to Trust No. 1

To La Verne College, a Corporation, Trustee Under
Declaration of Trust No. 1

Pasadena, California

June 1, 1939.

Whereas, on or about the 23rd day of May, 1939, Levi M. Davenport, husband of the Trustor herein, conveyed and transferred to LaVerne College as Trustee, certain property described in a Declaration of Trust executed by LaVerne College as Trustee, which declaration of Trust reserved unto the Trustor and others, the right to add other property to the Trust Estate thereunder.

Now, Therefore, I, Barbara N. Davenport, wife of said Trustor, do hereby deliver to you herewith, property and instruments of transfer listed below. Such right, title and property as is received by you by virtue of such delivery shall from the date of its acceptance by you become a part of said Trust Estate, subject to all the terms of said trust, except as follows:

(1) I hereby reserve the right to collect and retain for my own use, all of the income of the property [129] hereby transferred for and during the term of my natural life, and the right to designate for a period of time which shall not exceed the life, or lives of persons in being, the use to which one-half of the net income may be put after my death. The property hereby conveyed is described as follows:

Parcel 1. Lot 4 of Block "F" of Subdivision No. 1 of Wellington Heights, in the County of Los Angeles, State of California, as per map recorded in Book 5, Page 7 of Maps in the office of the County Recorder of said County, free and clear of all incumbrances, excepting taxes for the fiscal year 1939-40 and conditions, restrictions reservations of record.

Parcel 2. The Northeast Quarter of the Southwest Quarter of Section 19, Township 15, S. Range 19 East M.D.B. & M., in the County of Fresno, State of California.

Pasadena, California.

June 1, 1939.

BARBARA N. DAVENPORT,
Trustor.

LaVerne, California

June 3, 1939.

The undersigned hereby acknowledge delivery to it of the foregoing, and of the property and instruments above enumerated, which property and all rights, title, and interest received by virtue of such delivery are to be added to and become a part of the Trust Estate [130] under said Declaration of Trust hereinabove referred to, subject to all the terms and conditions thereof, and to the reservations herein contained.

[Seal]

LA VERNE COLLEGE,

As Trustee,

By EDGAR ROTHROCK,

President,

By J. C. BRANDT,

Secretary. [131]

JOINT EXHIBIT 5-E

GRANT DEED CORPORATION

Recorded Sept. 18, 1939, 2:29 p.m., Book 16840, Page 258 of Official Records, Los Angeles County, California.

La Verne College, a corporation, in consideration of less than \$100.00 Dollars, to it in hand paid, the receipt of which is hereby acknowledge, does hereby Grant to L. M. Davenport, a married man, whose wife's name is Barbara N. Davenport, all that property in the City of Los Angeles, County of Los Angeles, State of California, described as:

*

*

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In Witness Whereof, the above mentioned corporation has caused this deed to be duly executed and its corporate name to be subscribed hereto by its President and attested by its Secretary, who has hereunto affixed its corporate seal, this 2nd day of September, 1939.

(Corporate Seal)

LA VERNE COLLEGE,
By EDGAR ROTHROCK,
President.

Attest:

J. C. BRANDT,
Secretary. [132]

* * * * *

At a special meeting of the Executive Committee of the Board of Trustees of LaVerne College, a corporation, held September 1, 1939, at the Church of the Brethren, in LaVerne, California, the following resolution was adopted:

That, whereas LaVerne College, a corporation, now holds the deed to a property described as follows, to wit:

* * * * *

And that whereas LeVerne College, a corporation, holds this property in trust subject to the will of the Board of Trustees of the foundation known as the Davenport Foundation, and that whereas said Board of the Davenport Foundation has asked that the above property be deeded to L. M. Davenport.

Now, Therefore, be it resolved that LaVerne College deed said property to L. M. Davenport, and

Be it further resolved that Edgar Rothrock, President of the Board of Trustees of LaVerne College, a corporation, and J. C. Brandt, Secretary of the same board, be authorized to execute the necessary papers to consummate the transaction.

I, J. C. Brandt, the Secretary of the Executive Committee of the Board of Trustees of LaVerne College, a corporation, certify that the above is a true and correct copy of a resolution passed by said committee, September 1, 1939.

J. C. BRANDT. [133]

JOINT EXHIBIT 6-F

On motion by Mr. Steinour, seconded by Mrs. Weller, and carried, the following Resolution was adopted:

Whereas, the title to the property hereinafter described is vested in LaVerne College, a corporation, and

Whereas, it is deemed by this Board for the best interest of the Davenport Foundation that a building be constructed thereon, and that for the purpose that the sum of \$15,000.00 be borrowed therefor and a trust deed given to secure the payment thereof, and

Whereas, La Verne College cannot use its credit for that purpose,

Now, Therefore, Be It Resolved that LaVerne College be and it is hereby requested and in-

structed to convey said property to L. M. Davenport, for the purpose of permitting said L. M. Davenport to borrow thereon funds to construct said building.

The property hereinabove referred to is located in the City of Los Angeles, County of Los Angeles, State of California, and is more particularly described as follows: [134]

* * * * *

JOINT EXHIBIT 7-G

GRANT DEED CORPORATION

Recorded Nov. 9, 1940, 10:52 a.m. Book 17928, Page 244 of Official Records, Los Angeles County, California.

La Verne College, a corporation, a corporation, in consideration of less than One Hundred Dollars, to it in hand paid, the receipt of which is hereby acknowledged, does hereby Grant to Levi M. Davenport, a married man, as his separate property, whose wife's name is Barbara N. Davenport, all that property in the City of Pasadena, County of Los Angeles, State of California, described as:

* * * * *

In Witness Whereof, the above mentioned corporation has caused this deed to be duly executed and its corporate name to be subscribed hereto by its President and attested by its Secretary, who has

hereunto affixed its corporate seal, this 26th day of March, 1940.

(Corporate Seal)

LA VERNE COLLEGE,
a Corporation,
By EDGAR ROTHROCK,
President.

Attest:

J. C. BRANDT,
Secretary.
BARBARA N. DAVENPORT.

* * * * *

JOINT EXHIBIT 8-H

ARTICLES OF INCORPORATION FOR NON-PROFIT CORPORATION

Know All Men by These Presents: That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under Title XII, Article I of the "General Nonprofit Corporation Law" of the State of California,

And we hereby certify:

Article I.

That the name of the corporation shall be The Davenport Foundation.

Article II.

That the purpose for which this corporation is formed are as follows:

1. To act as Trustee under Christian Educational, Charitable, Eleemosynary, and other charitable

Joint Exhibit 8-H—(Continued)

trusts, receiving, holding, managing, administering and expending property and funds in accordance with the respective trusts upon which the same are acquired and held.

2. To receive and accept all kinds of property by gift, devise, and bequest, subject to such conditions and limitations as may be imposed by the donor, and in connection with property so acquired.

3. To lease, manage, operate, hold, have, use, take possession of and enjoy the same for the uses and purposes of the corporation, and to sell, lease, deed in trust, alien or dispose of the same at the pleasure of the corporation, [136] subject to the terms and conditions under which the same may have been acquired, and for the uses and purposes for which said corporation is formed, and to buy and sell real or personal property necessary and convenient to carry out the purposes of the corporation to borrow money, construct buildings on such real property, and to apply the proceeds of sale, including all and any income, to the uses and purposes of the corporation.

4. In administering any property given, transferred, devised, or bequeathed to the corporation, unless otherwise specifically provided in the particular instrument transferring the particular property to the corporation, the corporation shall be and it is hereby specifically and generally authorized and empowered:

(a) To sell, lease, mortgage, transfer or exchange all or any part of such property at such prices and

Joint Exhibit 8-H—(Continued)

upon such terms and conditions and in such manner as it may deem best;

(b) To execute and deliver any proxies, powers of attorney or to make, execute and deliver any contracts, deeds and all agreements and other instruments that it may be necessary or proper in the administration of the property.

(c) To invest, reinvest, loan and re-loan the whole or any portion of the trust estate conveyed to it in such, any, and all ways, properties or securities, and upon such terms and conditions as it may deem best, without restrictions to the character or class of loans and investments permitted to trust estates or trust companies. [137]

(d) To determine whether money or property coming into its possession shall be treated as principal or income, and charge or apportion any expenses or losses to principal or income as it may deem best or equitable;

(e) To select and employ in and about the execution of its business, all employees, agents, and attorneys it may deem necessary, and to pay the reasonable compensation and expenses;

(f) To do all and any other acts and things not hereinbefore specified which it may deem advisable, or which changed or varying conditions, laws, or circumstances may render necessary, or advisable to the end that the purposes of the corporation may be carried out.

(g) To have as to the trust estate and in the execution of its trusts, all the powers and discre-

Joint Exhibit 8-H—(Continued)

tions now or hereafter given to and conferred upon Trustees by law and in addition thereto all other powers and discretions that an absolute owner of property has or may have, but subject at all times to accountability for the prudent exercise thereof; in particular to have, respective bonds, shares of stock, and other securities received by it under any trust or trusts, the power of voting, giving proxies, payment of calls, assessments, and other sums necessary or expedient for the protection of the interests of the trust, participating and voting trusts, pooling agreements, assenting to corporate sales and other corporate acts, selling or exercising stock subscriptions, conversions, rights, participating in foreclosures, reorganizations, consolidations, [138] mergers, and liquidations; and in connection with any such proceedings to deposit securities with and transfer title to any protective or other committee representing the holders of such securities, or some portion thereof.

(h) To enter into any and all settlements, adjustments, or compromises deemed by the corporation necessary or expedient in order to settle and to institute or defend all suits, or other proceedings necessary to determine contests, or controversies, under wills, trust agreements or other instruments or in any manner arising related to or affecting property, devised or bequeathed or otherwise transferred to the corporation or the rights or claims of the corporation under such instruments; for such consideration as the corporation may deem adequate

Joint Exhibit 8-H—(Continued)

to convey and transfer prior or subsequent to distribution to or acceptance thereof by the corporation, rights and interests, present or future, which may pass to the corporation under wills or other instruments; and in general to do any and all things deemed by the corporation necessary to protect its interests in respect to property rights or interests, devised or bequeathed or otherwise transferred to it.

(i) To do each and every thing necessary, appropriate or adapted to carry into effect any and all of the foregoing purposes and powers, or to attain the objects of the corporation herein enumerated, or which at any time appears conducive to or expedient for the benefit and protection of the corporation, and generally to do any act or transact any business in connection with the said purposes, [139] powers which a copartner or a natural partner could do or exercise and which now or hereafter may be authorized by law, and to do each and every thing necessary in connection with the foregoing or calculated directly or indirectly to promote the interests of the corporation, and to protect and preserve the property held by it in accordance with and pursuant to the terms and conditions under which the property may have been received by the corporation.

This corporation is one which does not contemplate pecuniary gain or profit to the members thereof.

Article III.

That the existence of this corporation is to be perpetual.

Joint Exhibit 8-H—(Continued)

Article IV.

That the County in the State of California where the principal office for the transaction of the business of this corporation is to be located is Los Angeles County.

Article V.

That the names and addresses of the persons who are to act in the capacity of directors until the selection of their successors are:

Name	Address
C. Ernest Davis	LaVerne, California
Lucile Davenport Weller	McFarland, California
J. E. Steinour	Los Angeles, California
Fred A. Flora	Los Angeles, California
L. E. Miller	Whittier, California

The number of persons named above shall constitute the number of directors of the corporation, until changed by an amendment to the by-laws increasing or decreasing the number of directors as may be desired.

Article VI.

That the authorized number and qualifications of the members of the corporation which shall be all of one class, the property voting, election of directors, and other rights and privileges of the members, and the qualifications of directors shall be set forth in the by-laws of this corporation.

The Board of Directors shall constitute the members of the corporation. Vacancies on the Board of Directors shall be filled by The Elders Body of the Church of the Brethren of the Southern District of

Joint Exhibit 8-H—(Continued)

California and Arizona, from nominations made by the Board of Directors, provided however, that any vacancy caused by death, resignation, or removal of Lucile Davenport Weller shall be filled by the Standing Committee of the Church of the Brethren at the time of the Church Conference. Said Standing Committee shall fill such vacancy from among the children of Levi M. Davenport, who have the qualifications specified by said Levi M. Davenport in a certain Trust Agreement filed with the corporation, and lacking such children the vacancy shall be filled from among the grandchildren of said Levi M. Davenport. It is the intention of this provision that a child or a grandchild of said Levi M. Davenport, as long as [141] any are living and have the necessary qualifications, shall be a member of said Board of Directors. When all of the children and grandchildren of Levi M. Davenport are dead or not qualified to serve as directors of this corporation, such vacancy shall be filled in the same manner as herein provided for filling other vacancies.

Article VII.

That the by-laws of this corporation shall be adopted by the directors named in the Articles of Incorporation and may thereafter be amended or repealed by any means provided in the by-laws.

In Witness Whereof the persons who are to act in the capacity of first directors of the corporation

Joint Exhibit 8-H—(Continued)

have hereunto set their hands this 5 day of June, 1940.

/s/ C. ERNEST DAVIS,
/s/ LUCILE DAVENPORT
WELLER,
/s/ J. E. STEINOUR,
/s/ FRED A. FLORA,
/s/ L. E. MILLER. [142]

State of California,
County of Los Angeles—ss.

On this 19th day of June, 1940, before me, Jo Frances James a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Fred A. Flora, known to me to be the person whose name is subscribed to the foregoing instrument, and he duly acknowledged to me that he executed the same.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal] JO FRANCES JAMES,
Notary Public as aforesaid.

My Commission Expires January 2, 1944.

State of California,
County of Kern—ss.

On this 5th day of June, 1940, before me, H. A. Bower a Notary Public in and for the County of Kern, residing therein, duly commissioned and

Joint Exhibit 8-H—(Continued)

sworn, personally appeared Lucile Davenport Weller, known to me to be the person whose name is subscribed to the foregoing instrument, and she duly acknowledged to me that she executed the same.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal]

H. A. BOWER,

Notary Public as aforesaid.

State of California,

County of Los Angeles—ss.

On this 17th day of June, 1940, before me, F. K. Bixler, a Notary Public in and for the County of Los Angeles, residing therein, duly commissioned and sworn, personally appeared J. E. Steinour, known to me to be the person whose name is subscribed to the foregoing instrument, and he duly acknowledged to me that he executed the same.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal]

F. K. BIXLER,

Notary Public as aforesaid.

My Commission Expires March 15, 1944.

State of California,

County of Los Angeles—ss.

On this 25th day of June 1940, before me, Theo A. Davis a Notary Public in and for the County of Los Angeles, residing therein, duly commissioned

Joint Exhibit 8-H—(Continued)

and sworn, personally appeared C. Ernest Davis, known to me to be the person whose name is subscribed to the foregoing instrument, and he duly acknowledged to me that he executed the same.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal]

THEO A. DAVIS,

Notary Public as aforesaid.

My commission Expires July 26, 1943. [144]

State of California,
County of Los Angeles—ss.

On this 20th day of June 1940, before me, C. H. Gates a Notary Public in and for the County of Los Angeles, residing therein, duly commissioned and sworn, personally appeared L. E. Miller, known to me to be the person whose name is subscribed to the foregoing instrument, and he duly acknowledged to me that he executed the same.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal]

C. H. GATES,

Notary Public as aforesaid.

My Commission Expires February 25, 1943. [145]

JOINT EXHIBIT 9-I

BY-LAWS OF THE DAVENPORT
FOUNDATION

Article I.

Section 1. Principal Office. The principal office for the transaction of business of the Foundation is hereby fixed at 674 Elliott Drive, in the City of Pasadena, County of Los Angeles, State of California.

The Board of Directors shall have power and authority to change said principal office from one location to another, and the Secretary shall note any such change opposite this Section.

Article II.

Section 1. Directors. Subject to such limitations as may be prescribed by law all of the powers of the Foundation shall be exercised by, or under the authority of and the business and the affairs of the Foundation shall be controlled by the Board of Directors. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly [146] declared that the Board of Directors shall have the following powers:

First: To select and remove all the other officers, agents and employees of the Foundation, prescribe such powers and duties for them as may not be inconsistent with law, the Articles of Incorporation, or the By-laws, fix their compensation and require from them security for faithful service.

Second: To conduct, manage and control the affairs and business of the Foundation, and to make

Joint Exhibit 9-I—(Continued)

such rules and regulations therefor not inconsistent with law, the Articles of Incorporation, or the By-Laws, as they may deem best.

Third: To borrow money and incur indebtedness and to cause to be issued therefor in the name of the Foundation, promissory notes, deeds of trust, mortgages, pledges, hypothecations, or other evidence of debt, and securities therefor. Subject to the limitations contained in the Articles of Incorporation.

Fourth: To appoint an Executive Committee and other committees and to delegate to the executive [147] committee any of the powers and authority of the Board in the management of the business and affairs of the Foundation. The Executive Committee shall be composed of two or more members of the Board of Directors.

Section 2. Number and Qualification of Directors. The authorized number of Directors shall be five (5), and their qualifications shall be as set forth in that certain Declaration of Trust dated May 23, 1939, under which The Davenport Foundation was operated prior to its incorporation.

Section 3. Election and Term of Office. The members of the first Board of Directors shall hold office until their successors are elected and qualified. They shall be elected and vacancies shall be filled as provided in that certain Declaration of Trust dated May 23, 1939, under which The Davenport Foundation was operated prior to its incorporation.

Joint Exhibit 9-I—(Continued)

Section 4. Place of Meeting. Regular meetings of the Board of Directors shall be held at Pasadena, California, or at such other place as the Board of Directors shall designate by Resolution or by written consent of all members of the Board.

Section 5. Regular Meetings. The regular annual meeting of the Board of Directors shall be held on the third day of January at 9:30 o'clock A.M. of said day of each year, provided, however, should said day fall upon a legal holiday then said meeting shall be held at the same time on the next day thereafter ensuing which is not a legal holiday.

Other Regular Meetings. Other regular meetings of the Board shall be held upon call on the first Tuesday of April, July, and October of each year, at 9:30 o'clock a.m. of said day; provided, however, should said day fall upon a legal holiday, then said meeting shall be held at the same time on the next day thereafter ensuing, which is not a legal holiday. Notice of all such regular meetings of the Board of Directors is hereby dispensed with.

Section 6. Special Meetings. Special meetings of the Board of Directors for any purpose or purposes shall be called at any time by the President, or if he be absent or unable, or refuses to act by any Vice President or by two Directors. Written notice of the time and place of special meetings shall be delivered personally [149] to the Directors or sent to each Director by mail or other form of written communication, charges prepaid, addressed to him at his address as it is shown upon the records of the

Joint Exhibit 9-I—(Continued)

Foundation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the Directors are regularly held. In case such notice is mailed, or telegraphed, it shall be deposited in the United States Mail, in any place in the County of Los Angeles, or delivered to any Telegraph Company in any place in Los Angeles County, California, at least three days prior to the time of the holding of the meeting. In case such notice is delivered as above provided, it shall be so delivered at least three days prior to the time of the holding of the meeting. Such mailing, telegraphing or delivery as above provided shall be due, legal and personal notice to such Directors.

Section 7. Notice of Adjournment. Notice of the time and place of holding an adjourned meeting need not be given to absent Directors if the time and place be fixed at the meeting adjourned.

Section 8. Entry of Notice. Whenever any Director has been absent from any special meeting of the Board of Directors, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such special meeting was given to such Director, as required by law and the By-laws of the Foundation.

Section 9. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and

Joint Exhibit 9-I—(Continued)

if, either before or after the meeting, each of the Directors not present sign a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the records or made a part of the minutes of the meeting.

Section 10. Quorum. A majority of the authorized number of Directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the Directors [151] present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, unless a greater number be required by law.

Section 11. Adjournment. A quorum of the Directors may adjourn any Directors' meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the Directors present at any Directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

Section 12. Fees and Compensation. Directors shall not receive any stated salary for their services as Directors, but, by resolution of the Board, a fixed fee, with or without expenses of attendance, may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any Director from serving the Foundation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefor.

Joint Exhibit 9-I—(Continued)

Article III.

Section 1. Officers. The officers of the Foundation shall be a President, a Vice President, a Secretary, [152] and a Treasurer. The Foundation may also have, at the discretion of the Directors, a chairman of the Board, one or more additional Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article. All officers must be Directors. One person may hold two or more offices, except those of President and Secretary.

Section 2. Election. The officers of the Foundation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article, shall be chosen annually by the Board of Directors, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

Section 3. Subordinate Officers, Etc. The Board of Directors may appoint such other officers as the business of the Foundation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in the By-laws or as the Board of Directors may from time to time determine. [153]

Section 4. Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the Directors at the time in office,

Joint Exhibit 9-I—(Continued)

at any regular or special meeting of the Directors, or except in case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the Board of Directors or to the President, or to the Secretary of the Foundation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause, shall be filled in the manner prescribed in the By-laws for regular appointments to such office.

Section 6. Chairman of the Board. The chairman of the Board, if there shall be such an officer, shall, if present, preside at all meetings of the Board of Directors, or prescribed by the By-laws.

Section 7. President. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the Board, if there be such an officer, the president shall be the chief executive officer of the Foundation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Foundation. He shall preside at all meetings of the Directors in the ab-

Joint Exhibit 2-I—(Continued)

sence of the chairman of the Board. He shall be ex-officio a member of all the standing committees including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of president of a Foundation, and shall have such other powers and duties, as may be prescribed by the Board of Directors or by the By-laws.

Section 8. Vice President. In the absence or disability of the president, the vice-presidents in order of their rank as fixed by the Board of Directors, or if not ranked, the vice-president designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice-presidents [155] shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors or the By-laws.

Section 9. Secretary. The secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board of Directors may order, of all meetings of Directors, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at directors' meetings, and the proceedings thereof.

The Secretary shall give, or cause to be given notice of all the meetings of the Board of Directors required by the By-laws or by law to be given,

Joint Exhibit 9-I—(Continued)

and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the By-laws.

Section 10. Treasurer. The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the property and business transactions of the Foundation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, and surplus. [156] The books of account shall at all times be open to inspection by any Director.

The treasurer shall deposit all moneys and other valuables in the name and to the credit of the Foundation with such depositaries as may be designated by the Board of Directors. He shall disburse the funds of the Foundation as may be ordered by the Board of Directors, shall render to the president and Directors, whenever they request it, an account of all of his transactions as treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the By-laws.

Article IV.

Miscellaneous

Section 1. Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Foundation, shall be signed or endorsed by such person or persons and

Joint Exhibit 9-I—(Continued)

in such manner as, from time to time, shall be determined by resolution of the Directors. [157]

Section 2. Annual Report. The Board of Directors of the Foundation shall cause to be sent to the District Conference of the Church of the Brethren of the Southern District of California and Arizona, not later than twenty days before the Annual meeting of said District Conference, an annual report of the business of the Foundation.

Section 3. Contract, Etc., How Executed. The Board of Directors, except as in the By-laws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Foundation, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the Foundation by any contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

Section 4. The provisions of the Declaration of Trust herein referred to, so far as the same may be applicable, shall govern the affairs of the Foundation.

Section 5. The Foundation may receive gifts of additional property, subject to such terms and conditions [158] as the donor may make, provided said terms and conditions are acceptable to the Board of Directors.

Section 6. Seal. This corporation shall have a

Joint Exhibit 9-I—(Continued)

common seal, circular in form, having the following words and figures thereon:

The Davenport Foundation
Incorporated July 8, 1940,
Pasadena, California.

Article V.

Amendments

Section 1. Power of Directors. New By-laws may be adopted or these By-laws may be amended or repealed by the Board of Directors. [159]

Know All Men by These Presents:

That we, the undersigned, being all of the members and incorporators of the Davenport Foundation, a corporation organized under and existing by virtue of the laws of the State of California, and having its principal place of business in the City of Pasadena, County of Los Angeles, State of California, hereby assent to the foregoing by-laws contained on pages 1 to 14, both inclusive, of this book of by-laws, and we hereby adopt the same as and for the by-laws of said corporation.

In Witness Whereof we have hereunto subscribed our names this 5th day of September, 1940.

C. ERNEST DAVIS,
LUCILE DAVENPORT
WELLER,
J. E. STEINOUR,
FRED A. FLORA,
L. E. MILLER. [160]

Joint Exhibit 9-I—(Continued)

Certificate of Secretary

I, the undersigned, do hereby certify:

(1) That I am the duly elected and acting secretary of the Davenport Foundation, a corporation, and

(2) That the foregoing By-laws, comprising Fourteen (14) pages constitute the original By-laws of said Foundation as duly adopted at the first meeting of the Board of Directors thereof duly held Thursday, September 5th, 1940.

In Witness Whereof, I have hereunto subscribed my name this 5th day of September, 1940.

FRED A. FLORA,
Secretary. [161]

JOINT EXHIBIT 10-J

Motion by Mrs. Weller, seconded by Mr. Steinour, and carried, the following resolution was adopted:

Whereas Levi M. Davenport and Barbara N. Davenport, his wife, heretofore conveyed certain property to the La Verne College, which was received by said College under a Declaration of Trust dated the 23rd day of May, 1939, which Declaration of Trust was designated as The Davenport Foundation, and

Whereas on July 8th, 1940, said Foundation was incorporated under the laws of the State of California, and the incorporators, the first Board of Directors of said corporation, have met and organized themselves as a Board of Directors with the necessary and proper officers pursuant to the by-

laws theretofore adopted by the members of said corporation, and

Whereas one of the purposes of organizing said corporation was to receive and hold title to said property heretofore conveyed to said La Verne College, and the existence of the Davenport Foundation, an unincorporated association which has heretofore managed and controlled the operation of said property, may be dissolved upon the transfer of said property to said corporation known as The Davenport Foundation, and

Whereas the Board of Directors of said unincorporated Foundation has requested that all of the property held by La Verne College under said Declaration of Trust be transferred to The Davenport Foundation, a corporation, [162]

Now Therefore Be it resolved that La Verne College be, and it is hereby instructed to convey to The Davenport Foundation, a corporation, all of the property and assets which La Verne College now holds under the said Declaration of Trust. Such conveyances and transfers shall be made subject to that certain Declaration of Trust of May 23rd, 1939, designated The Davenport Foundation, an unincorporated association, and the acceptance thereof by this corporation known as The Davenport Foundation shall be a recognition of the fact that the assets so transferred are subject to and accepted by this corporation, subject to the terms and provisions of said Declaration of Trust.

Adopted September 5, 1940. [163]

JOINT EXHIBIT 11-K

GRANT DEED

CORPORATION

Recorded February 20, 1941, 8:00 A.M. Book 489, Page 591, Official Records Riverside County, California.

La Verne College, a corporation, organized under the laws of the State of California, with its principal place of business at LaVerne, California, in consideration of Ten Dollars, to it in hand paid, the receipt of which is hereby acknowledged, does hereby Grant to the Davenport Foundation, a corporation organized under the laws of the State of California, with its principal place of business at Pasadena, California, all that property in the County of Riverside, State of California, described as:

* * * * *

Actual consideration less than One Hundred Dollars.

In Witness Whereof, the above mentioned corporation has caused this deed to be duly executed and its corporate name to be subscribed hereto by its President and attested by its Secretary, who has hereunto affixed its corporate seal, this 8th day of October, 1940.

[Corporate Seal]

LA VERNE COLLEGE,
By EDGAR ROTHROCK,
President.

Attest:

J. C. BRANDT,
Secretary. [164]

* * * * *

JOINT EXHIBIT 12-L

CORPORATION GRANT DEED

Recorded October 24, 1940, 2:27 P.M. Book 17911,
Page 202, Official Records Los Angeles County, California.

La Verne College, a corporation organized under the laws of the State of California, with its principal place of business at LaVerne, California, in consideration of Ten Dollars, to it in hand paid, receipt of which is hereby acknowledged, does hereby grant to The Davenport Foundation, a corporation organized under the laws of the State of California, with its principal place of business at Pasadena, California, the real property in the County of Los Angeles, State of California, described as follows:

* * * * *

Actual consideration less than \$100.00.

In Witness Whereof, said Corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its President and Secretary thereunto duly authorized, this 8th day of October, 1940.

[Corporate Seal]

LA VERNE COLLEGE,
By EDGAR ROTHROCK,
President,
By J. C. BRANDT,
Secretary. [165]

JOINT EXHIBIT 13-M

GRANT DEED

Recorded July 14, 1941, 11:33 A.M. Book 18464,
Page 346, Official Records Los Angeles County,
California.

In Consideration of less than 100.00, receipt
of which is acknowledged, Levi M. Davenport, some-
times known as L. M. Davenport, a married man,
as his separate property, whose wife's name is
Barbara N. Davenport, whose permanent address is
....., does hereby grant to The Davenport Foun-
dation, a corporation, organized under the laws of
the State of California, with its principal place of
business at Pasadena, California, whose permanent
address is, the real property in the City of
Pasadena County of Los Angeles, State of Califor-
nia, described as:

* * * * *

Dated this 31st day of May, 1941.

LEVI M. DAVENPORT,

BARBARA N. DAVENPORT.

JOINT EXHIBIT 14-N

ANNUITY AGREEMENT

Recorded July 14, 1941, 11:33 a.m., Book 18548,
Page 326, Official Records, Los Angeles County,
California.

This Agreement Made and entered into this 23rd
day of June, 1941, by and between The Davenport
Foundation, a corporation, organized under and
existing by virtue of the laws of the State of Cali-
fornia, and having its principal office for the trans-

action of business located in the City of Pasadena, County of Los Angeles, State of California, the party of the first part, hereinafter called Donee, and L. M. Davenport and Barbara N. Davenport, husband and wife, of Pasadena, California, the parties of the second part, hereinafter called Donors.

Witnesseth: That

Whereas, contemporaneously with the execution of this agreement the Donors have conveyed to the Donee that certain real property situate, lying, and being in the City of Pasadena, County of Los Angeles, State of California, and more particularly described as follows, to wit:

Lots 50 and 49 of Tract No. 360, Oak Knoll, as per map recorded in Book 15, Page 22 of Maps, in the office of the County Recorder of said County. Except from Lot 49 that portion described as follows: Starting at the Southeast corner of said Lot 49; thence North along line of Oak Knoll Avenue 100 feet; thence West to a point in West line of said Lot, 70 feet distant from Southwest corner of said Lot; thence South along said West line of said Lot, 70 feet to Southwest corner of said Lot; thence East 138.65 feet, more or less, along South line of said Lot to point of beginning.

Whereas, said Donee has paid no consideration for said property and the Donors have conveyed said property upon certain terms and conditions to which conditions the Donee has consented, all of which said conditions are contained herein. [167]

Now Therefore, the Donee in consideration of the transfer to it of said property does hereby agree as follows:

1. To accept and does hereby accept said property subject to the right of the Donors and the survivor of them to the use thereof for and during the term of their and each of their natural lives. If, however, the Donor L. M. Davenport should predecease the Donor, Barbara N. Davenport, such right shall terminate in the event said Barbara N. Davenport does not desire to live in or upon said premises. The Donee in consideration of the transfer to it of said property and other valuable consideration agrees to pay to Lucile Davenport Weller, daughter of the Donor, L. M. Davenport, the sum of \$100.00 per month, on or before the 5th day of each and every month, retroactive to January 1st, 1941, in monthly installments for and during the term of her natural life.

2. Upon the death of said Lucile Davenport Weller, to pay to Dorothy Mae Weller, granddaughter of the Donor, L. M. Davenport, and daughter of Lucile Davenport Weller, the sum of \$100.00 per month for and during the term of her natural life provided, however, that in the event she should marry and her gross income from other sources together with that of her husband should equal \$300.00 per month, then and thereupon said monthly sum shall be reduced to \$50.00 per month, and in the event that their gross combined incomes as aforesaid should equal \$500.00 per month said payment shall cease and this [168] annuity terminate and

said property and the income thereupon shall belong to said Donee free and clear of all of the conditions herein placed thereon to be used for the general purposes of the Foundation. It is understood and agreed by and between the Donors and the Donee that the annuity income herein provided shall not be assignable nor shall the annuitants or either of them have any power to sell, incumber or anticipate the payments of said annuity or annuities and that the same shall not in any manner whatsoever be liable for the payment of any debt she may now owe or hereafter incur; that after the death of the Donors, or in the event that Barbara N. Davenport should not occupy said premises after the death of said L. M. Davenport, the Donee may sell or exchange said premises.

This Agreement shall be binding upon the heirs, executors, and administrators of the Donors and the successors and assigns of the Donee.

THE DAVENPORT
FOUNDATION,

By C. ERNEST DAVIS,
President.

[Corporate Seal]

By FRED A. FLORA,
Secretary.

L. M. DAVENPORT,
BARBARA N. DAVENPORT.

State of California,
County of Los Angeles—ss.

On this 3rd day of July, A.D. 1941, before me, Fred L. Merrill, a Notary Public in and for said County and State, personally appeared Fred A. Flora, L. M. Davenport & Barbara N. Davenport, known to me to be the persons whose names are subscribed to the within Instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] FRED L. MERRILL,

Notary Public in and for Said
County and State.

My Commission Expires March 27, 1945.

State of California,
County of Los Angeles—ss.

On this 23rd day of June, 1941, before me, Theo. A. Davis, a Notary Public in and for said County, personally appeared C. Ernest Davis known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Witness my hand and official seal.

[Notarial Seal] THEO. A. DAVIS,

Notary Public in and for Said
County and State. [170]

JOINT EXHIBIT 15-O

GRANT DEED

Recorded July 14, 1941, 11:33 a.m., Book 18614, Page 64, Official Records, Los Angeles County, California.

In Consideration of Less than \$100.00, receipt of which is acknowledged, Levi M. Davenport, sometimes known as L. M. Davenport, and Barbara N. Davenport, his wife, whose permanent address is, do hereby grant to The Davenport Foundation, a corporation, whose permanent address is, the real property in the City of Los Angeles, County of Los Angeles, State of California, described as:

* * * * *

Dated this 31st day of May, 1941.

LEVI M. DAVENPORT,
BARBARA N. DAVENPORT.

JOINT EXHIBIT 16-P

ANNUITY AGREEMENT

Recorded July 14, 1941, 11:33 a.m., Book 18580, Page 185, Official Records, Los Angeles County, California.

This Agreement Made and entered into this 23rd day of June, 1941, by and between The Davenport Foundation, a corporation, organized and existing by virtue of the laws of the State of California, and having its principal office for the transaction of business located in the City of Pasadena, County of Los Angeles, State of California, the party of

the first part, hereinafter called Donee, and L. M. Davenport and Barbara N. Davenport, husband and wife, of Pasadena, California, the parties of the second part, hereinafter called Donors.

Witnesseth: That

Whereas, contemporaneously with the execution of this agreement, the Donors have conveyed to the Donee that certain real property situate, lying, and being in the City of Los Angeles, County of Los Angeles, State of California, and more particularly described as follows, to wit:

Beginning at a point in the Southerly line of First Street distant two hundred and seventy-sevenths hundredths (200.77) feet Westerly from its intersection with the Easterly line of Lot "15d" of the Subdivision of the Garden of J. Murat, as per map recorded in Book 10, Page 8, Miscellaneous Records of said County; thence South $39^{\circ} 51'$ West (12) feet; thence Westerly on a line parallel with and distant six and one-half ($6\frac{1}{2}$) feet Southerly from the Southerly wall (and the prolongation Easterly of the Southerly line thereof) of the brick building formerly owned by Joseph Murat, shown on map accompanying deed recorded in Book 10, Page 111 of Deeds, Records of said County, eighty-nine (89) feet more or less, to a point in the Easterly line of San Pedro Street; thence Northerly along said street line, thirty-nine and two-twelfths ($39\frac{2}{12}$) feet to a point in said street line.

distant two (2) feet Northerly from the prolongation Westerly of the line of the Northerly wall of said building; thence Easterly on a straight line sixty-nine and one-half ($69\frac{1}{2}$) feet, more or less, to a point in the Southerly line of First Street, distant forty-two and twenty-four one-hundredths ($42\frac{24}{100}$) feet Westerly from the point of beginning; thence Easterly [172] along said Southerly line of First Street to the point of beginning. Together with all right, title and interest of the Grantors herein and to those portions of San Pedro and First Streets immediately adjoining and adjacent to the premises hereinbefore described, and

Whereas, said Donee has paid no consideration for said property and the Donors have conveyed said property upon certain terms and conditions to which conditions the Donee has consented, all of which said conditions are contained herein.

Now Therefore, the Donee in consideration of the transfer to it of said property does hereby agree as follows:

1. To accept and does hereby accept said property subject to the right of the Donor, L. M. Davenport to receive the net income derived and to be derived therefrom for and during the term of his natural life, and to the right reserved by the said Donor to designate in writing, during his lifetime, the disposition or use of said net income, for a period not to exceed ten years, after the death of said Donor, L. M. Davenport.

2. Upon the death of Donor L. M. Davenport and the expiration of the period during which, the donor may have in writing designated the use or disposition of the net income (not exceeding ten years) said property and the income therefrom shall belong to said Donee free and clear of all the conditions herein placed thereon, to be used for the General purposes of The Foundation, the donee herein.

This Agreement shall be binding upon the heirs, executors, and administrators of the Donors and the successors and assigns of the Donee.

THE DAVENPORT
FOUNDATION,

By C. ERNEST DAVIS,
President.

By FRED A. FLORA,
Secretary.

[Corporate Seal]

By L. M. DAVENPORT,
By BARBARA N. DAVENPORT.

State of California,
County of Los Angeles—ss.

Subscribed and sworn to this 23rd day of June,
1941, by C. Ernest Davis.

[Notarial Seal]

/s/ THEO A. DAVIS,

Notary Public in and for Said
County.

My Commission Expires July 26, 1943.

State of California,
County of Los Angeles—ss.

On this 3rd day of July, A.D. 1941, before me, Fred L. Merrill, a Notary Public in and for said County and State, personally appeared Fred A. Flora, L. M. Davenport & Barbara N. Davenport, known to me to be the persons whose names are subscribed to the within Instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] FRED L. MERRILL,

Notary Public in and for Said
County and State.

My Commission Expires March 27, 1945. [174]

JOINT EXHIBIT 17-Q

THE DAVENPORT FOUNDATION

Taxable Net Income Per Revenue Agent's
Letter of March 1, 1946, and Book Net Income

Income	1940	1941	1942	1943	1944
Interest	\$ 517.45	\$ 822.28	\$ 1,934.26	\$ 3,705.98	\$ 3,254.49
Rents (Gross)	6,986.54	13,894.77	15,182.35	17,337.38	16,540.06
Royalties (Oil)	125.33	220.54	224.35	201.73	197.93
Net Short-term Capital Gain.....		645.72			
Net Long-term Capital Gain.....	(61.60)	681.27	329.60	1,517.65	2,759.49
Total Income	\$7,477.72	\$16,264.58	\$17,670.56	\$22,762.74	\$22,751.97

Deductions

Rent and Miscellaneous.....	\$ 351.56	\$ 653.04	\$ 786.14	\$ 1,153.14	\$ 930.93
Repairs and Property					
Maintenance	802.40	2,403.26	1,500.12	1,743.87	2,273.79
Interest	278.48	155.28	26.67	106.69	
Taxes	1,348.95	3,204.84	2,841.56	3,079.29	4,140.20
Contributions	165.87	346.71	467.68	468.29	576.93
Depreciation	1,252.22	2,432.47	2,592.47	2,793.14	2,286.23
Other Deductions.....	126.63	480.78	569.88	4,520.70	1,582.27
Total Deductions.....	\$4,326.11	\$ 9,677.08	\$ 8,784.52	\$13,865.12	\$11,790.35
Net Income (IRA)	\$3,151.61	\$ 6,587.50	\$ 8,886.04	\$ 8,897.62	\$10,961.62
Unallowable Contributions.....	\$1,369.31	\$ 3,613.29	\$ 3,500.26	\$ 4,291.36	\$ 5,600.07
Book Net Income.....	\$1,782.30	\$ 2,974.21	\$ 5,385.78	\$ 4,606.26	\$ 5,361.55
Amounts Paid to Members of Davenport Family from Foundation					
Years 1940 to 1944, Inclusive					
Lucille Weller.....	*\$1,000.00	\$ 1,200.00	\$ 1,200.00	\$ 1,200.00	\$ 1,200.00
Homer Davenport.....		*625.00			

The Tax Court of the United States
Docket No. 10,427

THE DAVENPORT FOUNDATION,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

PRAECIPE FOR TRANSCRIPT

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above entitled cause in connection with the Petition for Review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the above named petitioner:

1. Docket entries of the proceedings before the Tax Court of the United States.
2. Original petition.
3. Answer to original petition.
4. Amended petition.
5. Answer to amended petition.
6. Memorandum, Findings of Fact and Opinion of the Tax Court promulgated December 24, 1947.
7. Decision of the Tax Court entered on December 29, 1947. [176]
8. Petition for Review filed on March 24, 1948.
9. Notice of filing Petition for Review filed on March 24, 1948.
10. Statement of Evidence approved and filed on April 19, 1948, and exhibits attached.

11. This Praecept for Record.
12. Notice of filing this Praecept for Record and the admission of service thereof.

Said transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

/s/ MELVIN D. WILSON,
Attorney for Petitioner.

Service of a copy of this Praecept for Record is hereby admitted this 19th day of April, 1948.

/s/ CHARLES OLIPHANT, OWS
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

[Endorsed]: Filed April 19, 1948. [177]

[Title of Tax Court and Cause.]

CERTIFICATE

I, Victor S. Mersch, clerk of the Tax Court of the United States do hereby certify that the foregoing pages, 1 to 177, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecept in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 20th day of April, 1948.

[Seal] /s/ VICTOR S. MERSCH, EMT
Clerk, the Tax Court of
the United States.

[Endorsed]: No. 11912. United States Circuit Court of Appeals for the Ninth Circuit. The Davenport Foundation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed April 26, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11912

THE DAVENPORT FOUNDATION,

Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY AND
DESIGNATION OF PARTS OF THE
RECORD NECESSARY FOR CONSID-
ERATION

To the Honorable Paul P. O'Brien, Clerk of the
United States Circuit Court of Appeals for the
Ninth Circuit:

Petitioner adopts as its points on appeal the
assignments of error included in the petition for
review within the transcript of record.

The petitioner designates for printing, the entire
transcript of the record.

Dated May 3, 1948.

/s/ MELVIN D. WILSON,
Attorney for Appellant.

[Endorsed]: Filed May 4, 1948.